(22,232)

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1912.

No. 83.

J. M. HEBERT, B. C. HEBERT, M. S. HAMSHIRE, L. HAMSHIRE, J. A. BORDAGES, AND J. E. BROUSSARD, APPELLANTS,

vs.

W. J. CRAWFORD, TRUSTEE, AND E. J. LE BLANC.

APPEAL FROM THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIFTH CIRCUIT.

INDEX.

JUDD & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C., JUNE 28, 1912.

a UNITED STATES OF AMERICA,
Fifth Judicial Circuit:

Pleas and Proceedings had and done at a regular term of the United States Circuit Court of Appeals for the Fifth Circuit, begun on the third Monday of November, 1909, and held in the Courtroom of said Court, in the City of New Orleans, before the Honorable Don A. Pardee, the Honorable A. P. McCormick and the Honorable David D. Shelby, United States Circuit Judges for the Fifth Judicial Circuit.

No. 2004.

J. M. HEBERT et al., Appellants,
versus
J. W. CRAWFORD, Trustee, Appellee.

Be it remembered, That heretofore, to-wit: on the 24th day of November, 1909, a transcript of the record of the above styled cause from the District Court of the United States for the Eastern District of Texas, was filed in the office of the Clerk of said United States Circuit Court of Appeals for the Fifth Circuit, in the words and figures following, to-wit:

1 *Caption.*

Be it remembered, That, in vacation, on the 30th day of July, A. D. 1909, there came on to be heard, before Honorable David E. Bryant, United States District Judge for the Eastern District of Texas, the following named cause, pending in the District Court of the United States for the Eastern District of Texas, at Beaumont, and the following proceedings were had, to wit:

No. 3. In Equity.

W. J. CRAWFORD, Trustee in Bankruptcy,
vs.
J. M. HEBERT et al.

Index.

2 In the District Court of the United States for the Eastern District of Texas, at Beaumont

To the Honorable David E. Bryant, Judge of said Court:

Your orator, W. J. Crawford, brings this, his bill of complaint against J. M. Hebert, B. C. Hebert, L. C. Hamshire, M. S. Hamshire, J. A. Bordages, E. J. Le Blanc and J. E. Broussard; and thereupon your orator complains and says:

1st. That on the 16th day of July, 1906, Moore & Bridgeman, a firm composed of E. F. Moore and F. W. Bridgeman, filed their voluntary petition in bankruptcy in this Court, and were afterwards, on the 26th day of said month, duly adjudged bankrupts. That with their said petition they filed a schedule of all their liabilities and a portion of their assets, property and effects. That amongst the creditors whose liabilities were scheduled there appeared an indebtedness of $9,000 due and owing to the Beaumont Rice Mills, a partnership doing business in the City of Beaumont, in Jefferson County, Texas, composed of all the respondents herein, whose claims are above mentioned, were partners, and that said respondents were, as your orator is advised and believes, the only persons interested in said partnership. That from the schedule of assets filed the said bankrupts claimed to be the owners of a crop of rice grown on a tract of land located in the said County of Jefferson, State of Texas, known as the Stengle farm, and a lot of mules, horses, agricultural implements and other property not necessary here to be mentioned. That they, the said bankrupts, were at the same time the owners of another crop of rice grown in said County of Jefferson on a tract of land then belonging to one McCrimmin, and which was held under a lease from the owner thereof, containing 280 acres, upon which there was a growing crop of rice. That the rice grown on the McCrimmin land was not scheduled as a part of the assets of said bankrupts, yet they were nevertheless the owners of it, and same was withheld from said schedule, as your orator charges and believes, for the purpose of concealing the same from the creditors of said bankrupts and of depriving them of the value thereof, and for the purpose of withholding it from the administration of the estate of said bankrupts, under the order and direction of this Honorable Court.

3 2nd. That after the said Moore & Bridgeman were adjudged bankrupts the respondent, E. J. Le Blanc was appointed trustee of the estates of said bankrupts by the Honorable John Broughton, Referee, who after his said appointment filed his bond with J. E. Broussard, the largest contributor to the capital stock of the Beaumont Rice Mills and the General Manager of its business, as one of his securities, which said bond was duly approved, and the said LeBlanc having complied with all the orders of the Court appointing him such trustee, took charge of the property and effects of said bankrupts. That he failed, however, and neglected to file an inventory of the property and effects which

came into his possession as such trustee within the time required by law and the rules of the Court. That after taking possession of all of said property and effects he retained the said bankrupts, E. F. Moore and F. W. Bridgeman in charge thereof, as his servants and employés, and permitted said bankrupts to manage and control said property as if they were owners thereof, and as if no adjudication in bankruptcy had really been made.

3rd. That the property and effects which came into the possession of the said E. J. LeBlanc, trustee, consisted of the crops of rice grown on the Stengle and McCrimmin farms, and of all the mules, horses, agricultural implements and other property belonging to said estates. That after taking possession thereof the said LeBlanc, trustee, harvested the crops of rice grown on the said Stengle and McCrimmin farms by his servants, agents and employees, the said E. F. Moore and F. W. Bridgeman, using for that purpose the teams, agricultural implements and machinery which belonged to the estate of said bankrupts. That he sold the crop of rice grown on the Stengle farm, as appears from the reports filed by him. That he took possession as trustee, of the crop grown on the McCrimmin farm, which produced 8583 sacks, after paying the water rents, and rent charges, and of the value of $11,642.25, and delivered the same to the Beaumont Rice Mills, a partnership in which he was a partner, as hereinbefore stated, and appropriated the same to the use of said partnership and of him, the said E. J. LeBlanc.

4th. Your orator states that the Parlin & Orendorff Company, Parlin & Orendorff Implement Company, Houston Rice Mills and L. W. Levy & Co. were each creditors of the said bankrupts, and that their claims as such have heretofore been allowed against the estate of said bankrupts. That in the month of December,
4 1906, the said E. J. LeBlanc, trustee, never having filed an inventory of the property and effects of the said bankrupts, as it was his duty to do, the said creditors filed their petition to remove him from his said charge and trust on account of his failure so to do. That thereupon the said trustee tendered his resignation, and therewith filed what purported to be an account of his administration of the estate of said bankrupts. That he omitted from his said account, however, the crop of rice grown on the McCrimmin farm, consisting of 3583 sacks, and of the value of $11,642.25, as hereinbefore stated, altho he had come into the possession thereof as such trustee, and was at the time in the possession of said crop, and if he was not in possession he had delivered the same without an order of the court so to do to the partnership in which he was a partner, to-wit: The Beaumont Rice Mills. That having failed to account for said rice or the value thereof, as it was his duty to do in the administration of said estate, the creditors of said bankrupts above mentioned, whose claims have been allowed, filed their exceptions to his said report, and amongst other things charged that he had omitted therefrom the McCrimmin rice above mentioned of the value of $11,642.25.

5th. Your orator states that the said trustee averred and claimed in the trial of the issue made by the exceptions to the account of his

administration of the estate of said bankrupts that he should not be charged with the value of the McCrimmin rice, because he averred, and undertook to prove and establish that the said rice was not the property of said bankrupts, and that it never came into his possession as trustee of said estates, but that the same was the property of the Beaumont Rice Mills, in which he, the said trustee, was a partner, and that it became the property of said partnership by the terms of a contract which had been negotiated between the respondent, J. E. Broussard, the largest shareholder in said copartnership, and acting for said Beaumont Rice Mills, and the general manager of its business, and said bankrupts, at and before the filing of said petition in bankruptcy, by which the said crop of rice was transferred and delivered to said Beaumont Rice Mills in satisfaction of the debt due and owing from said bankrupts to said partnership. That said crop of rice was in the possession of said partnership, or in the possession of J. E. Broussard as trustee for said partnership at the time of said adjudication in bankruptcy, and that it had never come into his possession as trustee of said estates.

That the Referee, whose duty it was under the rules and orders in bankruptcy to audit the account of the said trustee, was without jurisdiction to hear and determine the right of property claimed by said Beaumont Rice Mills in and to said crop of rice, and said trustee excepted to the jurisdiction of the court before said Referee, because he averred that said Referee could not, in any proceeding, hear and determine the claim urged to said property by said Beaumont Rice Mills.

6th. Your orator avers that upon the hearing of said exceptions and in the trial of the issues made thereon the said J. E. Broussard was present, representing said Beaumont Rice Mills, and testified as a witness to the contract and agreement claimed to have been made and entered into between him, as the representative of the Beaumont Rice Mills, and the said bankrupts, by which he insisted that the said Beaumont Rice Mills became the owner of said crop of rice grown on the McCrimmin farm, and all the evidence relating to said pretended transaction available to said Beaumont Rice Mills was presented before said Referee, and whether or not said Beaumont Rice Mills was a party to said proceedings, they submitted, through their co-partner, E. J. LeBlanc, who acted in the capacity of trustee, as hereinbefore stated, every right they had thereto, and the referee before whom the same was tried held upon the insistence of the said Beaumont Rice Mills, through their said co-partner, E. J. LeBlanc, that he was without jurisdiction to hear and determine the issues so made upon said exceptions, and that in the proceedings so instituted the right to said McCrimmin rice could not be determined by him, and said referee failed and refused to charge the trustee with the value of said rice.

7th. Your orator states that said creditors thereupon filed their petition in this Honorable Court for a review of the findings and judgment of said Referee upon said exceptions, and upon a hearing of said petition with all the evidence thereon that had been taken before the said Referee, this Honorable Court held and determined

that the said crop of McCrimmin Rice was at the time of the filing of said petition in bankruptcy by said bankrupts, the property of said bankrupts. That it afterwards came into the possession of the said E. J. LeBlanc, trustee, and was of the value hereinbefore mentioned, to-wit: $11,642.25, and that said trustee was justly chargeable with the value thereof, which said judgment was rendered on
6 the 17th day of December, 1907, and the said tr[illegible] was ordered, among other things which were then held and determined, and which are not material to mention in this behalf, to pay the value of said rice within ten days thereafter into the registry of this Court. That the said E. J. LeBlanc deeming himself aggrieved by said judgment, appealed therefrom, and at the same time being doubtful whether an appeal was the proper remedy, filed his petition for review of the findings and judgment of this Court before the Honorable U. S. Circuit Court of Appeals for the Fifth Circuit at New Orleans. That afterwards, on the 26th day of January, 1909, said cause was heard upon appeal and upon the petition for review, when all of the matters in controversy between said LeBlanc and said creditors having been fully examined and reviewed by said Circuit Court of Appeals, the said appeal was dismissed and the judgment of this Honorable Court in all things affirmed, and approved.

8. That afterwards on the 1*th* day of March, 1909, the respondents, J. M. Hebert, B. C. Hebert, L. Hamshire, M. S. Hamshire, J. A. Bordages and J. E. Broussard, partners in said Beaumont Rice Mills, some of whom, including the said J. E. Broussard, have been witnesses in the issue made by the said E. J. LeBlanc, denying his liability for the said McCrimmin rice because the same was the property of the said Beaumont Rice Mills, and acting through their said co-partner, E. J. LeBlanc, trustee, submitted all their claim to said McCrimmin rice to this Honorable Court and to the Honorable Circuit Court of Appeals of the said Fifth Circuit for determination, and finding all their contentions overruled and denied, and their claims to said property refused then determined to file in the Honorable District Court of Jefferson County, 60th Judicial District of Texas, their petition against their said co-defendant, E. J. LeBlanc, trustee, claiming and averring that their said co-partner, for the purpose of complying with the order of the Court requiring him to pay into the registry thereof the value of the said McCrimmin rice, with the interest thereon, was attempting and threatening to raise the necessary funds to make said payment out of the property and effects, funds and assets of said Beaumont Rice Mills, and praying that he be enjoined and restrained from so doing. That upon a presentation of said petition to the Hon. L. B. Hightower, Judge of said District Court of Jefferson County, 60th Judicial Dis-
trict of Texas, an injunction was issued restraining and en-
7 joining the said E. J. LeBlanc, trustee, from appropriating the funds of said copartnership to the payment of the judgment and decree of this Honorable Court, directing said sum to be paid into the registry thereof on account of the failure and refusal of the said trustee to account for the value of said crop of rice.

9. Your orator states that the mandate of said Circuit Court of Appeals for the Fifth Circuit was filed in this Honorable Court on the 3rd day of April, 1909. That the said respondent, E. J. Le Blanc not having paid or deposited said sum of money as commanded by the said judgment and decree, the creditors of said bankrupts hereinbefore mentioned, at whose instance said exceptions had been filed, made application to this Honorable Court for an order upon the said LeBlanc to show cause why he should not pay said sum of money in obedience to said order, and that in case of his continued failure and refusal to pay the same that he be punished in such manner as the Court should determine. That said application was heard after the answer of the said LeBlanc had been filed thereto on the 9th day of April, 1909, when the same was granted and the said LeBlanc was ordered and directed forthwith to pay over said sum, together with the interest thereon at the rate of 6 per cent per annum, to H. H. Haley, Deputy Clerk of this Honorable Court, at Beaumont, who by said judgment was directed upon the payment thereof to deposit the same with the Gulf National Bank of Beaumont, there to be held and retained until the successor of the said E. J. LeBlanc, trustee, who had resigned his said trust, should be elected and qualified, in which event the said Clerk was directed to pay over said sum to said trustee so to be elected.

10. That in obedience to said order the said E. J. LeBlanc, trustee, did pay said sum of money, amounting with the accumulated interest thereon to $12,486.00, to the said Haley, Deputy Clerk, who deposited the same with the Gulf National Bank as required by said order.

11. That thereafter your orator was appointed trustee of the estate of said Moore & Bridgeman, bankrupts, by the Hon. John Broughton, Referee, to succeed the said E. J. LeBlanc, and that after qualifying as such trustee by giving the bond required by said order of appointment, the said Gulf National Bank and the said H. H. Haley paid over to your orator as trustee the said sum of moneys above mentioned, in obedience to said order, and
8 that your orator has ever since been and is now in charge thereof and holds the same as trustee to be used and disbursed in the administration of the estate of said bankrupts under the order and direction of this Honorable Court.

12. That after the payment of said sum to your orator in the manner and form stated the respondents herein filed in the said District Court of Jefferson County, 60th Judicial District of Texas, what they denominated their supplemental petition in the cause originally instituted by them against the said E. J. LeBlanc, trustee, by which said supplemental petition they made your orator and the Gulf National Bank parties defendant, and averred that the said E. J. LeBlanc, trustee, had paid over said sum to your orator in violation of the injunction sued out by the said Honorable District Court, 60th Judicial District of Texas, and by which supplemental petition said respondents seek to have said funds diverted from the estates of said bankrupts and from the creditors thereof and from

the administration of said estates in bankruptcy, and praying that your orator as trustee of said estates be enjoined and restrained from paying out said fund under the order and direction of this Honorable Court.

13. Your orator states that by the adjudication in bankruptcy of the said Moore & Bridgeman, bankrupts, the said E. J. LeBlanc, trustee, became vested with the title and possession of all the property of said bankrupts of whatever it consisted, and wherever located, and that this Honorable Court took upon itself the administration of said estates, and for that purpose assumed the control and possession of said property. That the said E. J. LeBlanc came into the possession thereof as an officer of this Honorable Court as trustee, and that said property was in his actual custody and under his control, and he was liable for its custody or for its value in case he parted with the possession thereof without an order of court so to do.

14. Your orator further states that all the facts about the ownership of the said McCrimmin rice were well known to the said E. J. LeBlanc, trustee, at the time he was appointed and qualified as such, and that they were well known to the said J. E. Broussard and to all of his co-respondents herein, at the time the said E. J. LeBlanc, trustee, was appointed, and at the time of his resignation, and of the filing of the account of the administration of the estates of said bankrupts, and of the trial of the issues between the creditors
9 of said bankrupts and said trustee. That the said respondents and the said E. J. LeBlanc, trustee, as partners doing business under the name of the Beaumont Rice Mills, were willing to take said property without an order of this Honorable Court so to do, and to appropriate said property to their own use, and that they were willing to receive and did receive the said crop of rice under the circumstances related, and that they did submit their rights thereto upon the exceptions to said report filed by the said creditors, and having hazarded the determination of their claim in said proceeding, are concluded thereby, and that they are now estopped from claiming any interest in said property.

15. Your orator further states that the said Beaumont Rice Mills, a co-partnership consisting of all said respondents, did receive said crop of McCrimmin rice and have converted the same to their own use, altho, as he charges and avers, it was the property of said bankrupts, and that they still have said crop of rice, or the value thereof, and that they have no reason to complain of any action of this Honorable Court in reference thereto. That they claim said rice without any just reason for so doing, as your orator charges and believes, but whether their claim thereto was just or not, they received it, as already stated, and yet have it. That the said E. J. LeBlanc, acting jointly with his said co-partners, was willing that said property be taken by his said partnership, and to risk the consequences, with the result as has been ascertained and determined, that he is liable to the estate of said bankrupts for the value thereof, as has been held and determined by this Honorable Court. That the said E. J. LeBlanc has discharged his said liability by paying the value thereof into this Honorable Court. Your orator respect-

fully states that it was the duty of the said LeBlanc, and was perhaps prudent to comply with the order of court directing him to make said payment from whatever resources the funds necessary therefor could be obtained. That if his co-partners and correspondents contributed toward the raising of said fund or assisted him in any manner in obtaining said sum of money, that any liabilities resulting from such accomodation are matters for the consideration of said partners amongst themselves, with which your orator has no sort of concern. That the fund in his hands now sought to be reached by the resopndents in their action *in their action* in the State Court is really in the custody and under the control of this Honorable Court, and not subject to the jurisdiction of said State Court. That said respondents and said Beaumont Rice Mills have delayed the administration of the estate of said bankrupts for more than two years by their contentions for said funds made in the name of the said E. J. LeBlanc, trustee, and after having tried and lost every claim urged by them, they now seek to further embarrass, hinder and delay the administration of said estates by this Honorable Court by the proceeding instituted by them in the State Court, and are now undertaking to reverse, counteract and annul the judgment and decree of this Court awarding the value of said rice to your orator as trustee by the appeal to the State Court, which will result in much loss of time and much expense to the creditors of said bankrupts, who have already been delayed in their efforts to have the property of said bankrupts applied to the payment of their debts.

Wherefore, your orator prays that said respondents and each of them, their agents, attorneys and representatives of every character be perpetually enjoined and restrained from further prosecuting any action in the 60th Judicial District Court of the State of Texas, and in any other Court or Courts save and except in this Honorable Court, where such claims alone can be heard and determined.

Wherefore, your orator prays that the said defendants, J. M. Hebert, B. C. Hebert, L. Hamshire, M. S. Hamshire, J. A. Bordages, E. J. LeBlanc and J. E. Broussard, and each of them, their agents, attorneys and representatives, be enjoined and restrained from further proceeding against your orator by the action which they have instituted or caused to be instituted in the Honorable District Court of Jefferson County, 60th Judicial District of Texas, and that your orator may have such further or other relief in the premises as the nature and circumstances of the case may require.

May it please your Honor to grant to your orator a Writ of Subpœna to be directed to the said defendants, J. M. Hebert, B. C. Hebert, L. Hamshire, M. S. Hamshire, J. A. Bordages, E. J. LeBlanc and J. E. Broussard, thereby commanding them at a certain time and under a certain penalty therein to be limited personally to appear before this Honorable Court and then and there full, true and direct and perfect answer make to, all and singular, the premises, and to stand, perform and abide by such order, direction and decree as may be made against them and each of them in the prem-

ises as shall seem meet and agreeable to equity; and your orator will ever pray.

(Signed) U. F. SHORT,
Solicitor for Complainant.

11 STATE OF TEXAS,
County of Dallas:

U. F. Short, being first duly sworn, upon his oath says he is the attorney for W. J. Crawford, the complainant in the above entitled and foregoing cause. That he has prepared and read the foregoing bill of complaint, and that the facts therein related are true, except where made upon information and belief, and that of these he has made inquiry and believes the same to be true.

(Signed) U. F. SHORT.

Sworn to and subscribed before me this 25, day of June, 1909.

A. O. BRACKETT,
[SEAL.] *Clerk U. S. Dist. Court, E. D. Texas.*

In the U. S. District Court, Eastern District of Texas, in Chambers, This 23rd Day of June, 1909.

The within and foregoing petition for injunction being considered, it is ordered that the Clerk of the U. S. District Court for the Eastern District of Texas issue a writ of injunction in all things as prayed for in the within petition, enjoining and restraining the respondents herein, to-wit: J. M. Hebert, B. C. Hebert, L. Hamshire, M. S. Hamshire, J. A. Bordages, E. J. Le Blanc and J. E. Broussard, their agents, attorneys and representatives, from further prosecuting the action instituted by them in the District Court of Jefferson County, 60th Judicial District of Texas, against the complainant herein as trustee of Moore & Bridgeman, bankrupts, in which the fund described in the petition herein belonging to said estate is sought to be recovered, and from prosecuting any action in any court at law in the state of Texas to recover said fund, and that respondents appear and show cause if any they can on or before the 7th day of July, 1909, at Sherman, Texas, why the injunction hereby granted shall not be made perpetual.

(Signed) D. E. BRYANT, *Judge.*

(Indorsed:) Walter J. Crawford, Trustee, vs. J. M. Hebert, et al. Original Bill Filed June 28th, 1909. A. O. Brackett, Clerk, By H. H. Haley, Deputy.

12 In the District Court of the United States for the Eastern District of Texas, at Beaumont.

The President of the United States of America to J. M. Hebert, B. C. Hebert, L. C. Hamshire, M. S. Hamshire, J. A. Bordages, E. J. Le Blanc and J. E. Broussard, Greeting:

Whereas, Walter J. Crawford, trustee of the estate of Moore & & Bridgeman, bankrupts, has filed his original bill in a cause styled,

Walter J. Crawford, trustee vs. J. M. Hebert, et al., numbered 3 on the Equity docket of the United States District Court for the Eastern District of Texas, at Beaumont, praying for the issuance of a writ of injunction against you and each of you, your agents, attorneys and representatives from further prosecuting the action instituted by them in the District Court of Jefferson County, 60th Judicial District of Texas, as prayed in said original bill;

And, whereas the Honorable David E. Bryant, Judge of the United States District Court for the Eastern District of Texas has made the following order thereon, to-wit:

In the U. S. District Court, Eastern District of Texas, In Chambers, This 23rd Day of June, 1909.

The within and foregoing petition for injunction being considered it is ordered that the Clerk of the U. S. District Court for the Eastern District of Texas issue a writ of injunction in all things as prayed for in the within petition, enjoining and restraining the respondents herein to-wit: J. M. Hebert, B. C. Hebert, L. C. Hamshire, M. S. Hamshire, J. A. Bordages, E. J. LeBlanc and J. E. Broussard, their agents, attorneys and representatives from further prosecuting the action instituted by them in the District of Jefferson County, 60th Judicial District of Texas, against the Complainant herein as trustee of Moore & Bridgeman, bankrupts, in
13 which the fund described in the petition herein belonging to said estate is sought to be recovered, and from prosecuting any action in any court at law in the State of Texas to recover said fund, and that said respondents appear and show cause, if any they can, on or before the 7th day of July, 1909, at Sherman, Texas, why the injunction herein granted shall not be made perpetual.

D. E. BRYANT, *Judge.*

Now, therefore, You, J. M. Hebert, B. C. Hebert, L. C. Hamshire, M. S. Hamshire, J. A. Bordages, E. J. LeBlanc and J. E. Broussard, are hereby notified, as in above order mentioned, to be and appear before the Honorable David E. Bryant, Judge of the District Court of the United States for the Eastern District of Texas, at Sherman, Texas, on or before the 7th day of July, 1909, then and there to show cause why the injunction herein granted shall not be made perpetual.

And you, and each of you, your agents, attorneys and representatives are hereby commanded, and restrained, as in said order mentioned, from further prosecuting the action instituted by you in the District Court of Jefferson County, 60th Judicial District of Texas.

Herein fail not, under penalty of the law thence ensuing.

Witness, The Honorable David E. Bryant, Judge of the District Court of the United States for the Eastern District of Texas, and the seal thereof at Beaumont, this the 28th day of June, A. D., 1909.

A. O. BRACKETT, *Clerk,*
By H. H. HALEY, *Deputy.*

Marshal's Return.

Received this writ at Beaumont, Texas, June 29th, '09 and partially executed same by handing certified copies of this writ to J. M. Hebert, E. J. Le Blanc, M. S. Hamshire, within named, each in person, at Beaumont, Texas, June 29th, '09, and a certified copy to the within named J. E. Broussard, in person, at Beaumont, Texas, June 30th, 1909.

A. J. HOUSTON,
United States Marshal, E. D. T.,
By F. A. PARKER, *Deputy.*

14 *Marshal's Further Return.*

Further executed this writ at Hamshire, Texas, July 1, 1909, by delivering to L. C. Hamshire in person a copy of this writ certified to by the Clerk of the District Court Eastern District of Texas, at Beaumont, and further executed at Beaumont, Texas, July 1st, 1909, by delivering to J. A. Bordages, in person, a copy of this writ, certified to by the Clerk of the District Court, Eastern District of Texas, at Beaumont, Texas, and further returned not executed as to B. C. Hebert who is reported to be absent from the District, and nof expected to return to his home for several weeks.

A. J. HOUSTON,
United States Marshal,
By R. R. ADCOCK, *Deputy.*

Endorsed: Eq. No. 3. Walter J. Crawford, Trustee, vs. J. M. Hebert et al. Injunction. Issued June 28th, 1909. A. O. Brackett, Clerk, by H. H. Haley, Deputy. Filed July 6th, 1909. A. O. Brackett, Clerk, by H. H. Haley, Deputy.

District Court of the United States for the Eastern District of Texas.

No. 3. In Equity.

W. J. CRAWFORD, Plaintiff,
vs.
J. M. HEBERT et al., Defendants.

The joint and several demurrers of the defendant J. M. Hebert, B. C. Hebert, L. Hamshire, M. S. Hamshire, J. A. Bordages, and J. E. Broussard, six of the defendants herein.

(1)

These defendants demur to plaintiff's original bill of complaint and say there is manifest in same a total want of the -quities to

authorize the relief prayed for; for this, that the principal object of the suit which is sought to be enjoined is to determine title to certain rice, known as the McCrimmin crop; as is mani-
15 fest from said bill; that in section 15 of said bill occurs the allegations:—

"They" (meaning defendants herein), "claim said rice without any just reason for so doing, as your orator charges and believes, but whether their claim thereto was just or not, they received it and yet have it."

While in other portions of said bill it appears that the value of said rice has been taken from the funds of these defendants, and in violation of a state court injunction, and it is manifest from said bill that defendant, Leblanc, while under the complete control of this Court as one of its officers and while having in another and wholly different capacity, the power to draw funds of defendant Company, was coerced to draw such funds and place them in this court, since to use the language of the bill, it "was perhaps prudent for him to comply with the order of court directing him to make said payment from whatever resources the funds necessary therefor could be obtained," and defendants say these allegations manifest such a carelessness of the distinctions between right and wrong and disregard of the promptings of good conscience, and there is here at least such an equivocal manner of alleging essential facts, as to forbid a court of equity setting itself in motion to grant prayers based thereon.

(2)

Defendants demur to the allegations in sections 4, 5, 6, and 7 of said bill, and all others aimed at showing a conclusive adjudication, as against LeBlanc or his firm of title to the property in question, for this, that it is manifest from said bill that the only adjudications were in proceedings between the said LeBlanc as trustee in bankruptcy of the one side and creditors of the other, and it is manifest that said LeBlanc was never a party to said proceedings in any capacity except as trustee in bankrutcy, and such being the case, he could not be concluded in his individual capacity, nor as a partner, nor could his firm be concluded.

(3)

These defendants except to the allegations that defendant, Le Blanc, asserted on trial of certain issues in Bankruptcy proceedings, the title of Beaumont Rice Mills to the property in
16 question, as set out in section 5 of the said bill, and to the allegations of section 6 to the effect that J. E. Broussard represented the Beaumont Rice Mills as a witness therein, because such allegations are wholly insufficient to make a showing of conclusiveness of said proceedings as against the Beaumont Rice Mills, or any of these defendants, and such allegations are wholly impertinent and unnecessary, cumber the record, from which they should be stricken; but if they be permitted to remain, defend-

ants urge that same are wholly insufficient to show an adjudication against the Beaumont Rice Mills or any of the defendants.

(4)

These defendants further demur to said bill as being insufficiently verified to authorize the granting or issuance of an injunction, since it does not appear therefrom what portion of the averments are made with knowledge of the facts, and what portion upon information and belief, and it appears further that one essential averment to the effect that defendants claim said rice without any just reason for so doing, is made on belief or speculation merely, and not on information.

Wherefore, and for divers other good causes of demurrer appearing in said bill, these defendants respectfully demur thereto and humbly demand the judgment of this court, whether they shall be required to make any other answer to said bill, and pray to be hence dismissed with their costs and charges in this behalf most wrongfully sustained.

A. D. LIPSCOMB,
Solicitor for Defendant.

EASTERN DISTRICT OF TEXAS,
County of Jefferson, ss:

J. E. Broussard makes solemn oath and says that he is manager of the Beaumont Rice Mills, a Company whose interest is primarily involved in this suit, and is one of the above named defendants, authorized to act herein for the others, and that the foregoing demurrers are not interposed for delay, and that the same are true in point of fact.

J. E. BROUSSARD.

17 Subscribed and sworn to before me this 6th day of July, A. D. 1909.

[SEAL.] WILL P. OLDHAM,
Notary Public, Jefferson County, Texas.

I hereby certify that in my opinion the foregoing demurrers are well founded in point of law.

A. D. LIPSCOMB,
Of Counsel for Defendants.

Endorsements: No. — In Equity. In the District Court of the United States for the Eastern District of Texas. W. J. Crawford vs. J. M. Hebert, et al. Demurrers of the defendants Hebert, et al. to the plaintiff's original bill. Filed July 7th, 1909. A. O. Brackett, Clerk.

District Court of the United States in and for Eastern District of Texas.

No. 3. In Equity.

W. J. CRAWFORD, Complainant,
vs.
J. M. HEBERT et al., Defendants.

The joint and several answers of J. M. Hebert, B. C. Hebert, L. Hamshire, M. S. Hamshire, J. A. Bordages and J. E. Broussard, six of the defendants, to the bill of complaint of W. J. Crawford, plaintiff.

These defendants now and at all times hereafter saving to themselves all and all manner of benefit of exception or otherwise that can or may be had or taken to the many errors, uncertainties and imperfections in and of the said bill, for answer thereto, say:—

(1)

Defendants compose the firm of Beaumont Rice Mills, which is a Rice Milling Company organized upon the basis of $75,000 capitalization, divided into 75 shares of $1,000 each, whereof de-
18 fendant Broussard owns the majority and defendant, E. J. LeBlanc owns only two shares, and the entire management and control of the business of said company is, and at all times has been, by agreement of the shareholders, in said J. E. Broussard, who has the power of employing or discharging each and all subordinates, and who has defendant E. J. Le Blanc employed as clean rice salesman or distributor, for performance of which clerical duties the said LeBlanc is paid a salary in addition to his shares of profits; and the said J. E. Broussard has defendant N. S. Hamshire employed as one of the Mill Superintendents, whose duties are limited to superintendence of mechanical operations at the mill at Beaumont, Texas, and the authority and familiarity of the said LeBlanc and M. S. Hamshire are limited to what pertains to their several departments; and none of the other members of said company have any connection with or acquaintance with any of the details of its business, but have from the beginning, and still do entrust it wholly to the said J. E. Broussard; and that said Company is not incorporated, but in all particulars of management and conduct except as to limitation of liability, it is, and at all times has been managed and conducted as a corporation, with J. E. Broussard as General Manager, and its course of dealing in this respect is well understood by all persons dealing with it;

These respondents admit the alleged adjudication of bankruptcy of Moore & Bridgeman and their scheduling a claim for $9,000 in favor of the Beaumont Rice Mills, but say they have no knowledge why this was done, and aver that it was without their knowledge or consent; they admit that said Moore & Bridgeman

claimed in their schedule of assets to be owners of stock and agricultural instruments alleged, and of a crop of rice on the Stengle farm; but respondents deny that the said Moore and Bridgeman, or either of them, ever at any time owned or controlled the rice crop on the McCrimmin land, described in complainant's bill; these respondents say it is true the McCrimmin crop was not scheduled as a part of the assets of said bankrupts, but it is not true that same was so withheld with any purpose of concealment, but that same was omitted from the assets of said bankrupts because long before bankruptcy was contemplated by said Moore and Bridgeman or either of them, and before same came into existence, the absolute title and control of said rice crop was transferred to J. E. Broussard in trust for the Beaumont Rice Mills, as hereinafter more fully shown.

19

(2)

It is true that said E. J. LeBlanc was appointed trustee, and that J. E. Broussard became a surety on his bond as such, and LeBlanc complied with all the orders of the court appointing him, and took charge of all the property and effects of said bankrupts, but not of said McCrimmin rice crop. As to the allegations that LeBlanc failed to file an inventory and permitted the bankrupts to manage and control same, these defendants neither admit nor deny them, but demand strict proof.

(3)

Defendants deny that the crop of rice on the McCrimmin farm ever came into the possession or control of said LeBlanc in any capacity, and avers that same was at all times after the 15th day of June, 1906, in the possession of J. E. Broussard and under his complete control and management, and that said J. E. Broussard, as trustee of said crop and as Manager of the Beaumont Rice Mills, caused the said Moore & Bridgeman to harvest the said crop, and haul same for him; that in doing so the said Moore and Bridgeman used part of the teams and implements of the said bankruptcy estate, and in part used the implements of the Beaumont Rice Mills, and the said LeBlanc as trustee, was duly paid by the Beaumont Rice Mills the usual and customary rates for said services, including the labor of Moore and Bridgeman, and all other service employed therein, in accordance with an agreement made with said Moore by J. E. Broussard prior to performance of the service, and greatly to the advantage of the bankrupt estate. That it is true the said LeBlanc took possession of the rice grown on the Stengle farm and sold same, and accounted for its proceeds, and took possession of the mules, horses and implements; but it is not true that E. J. LeBlanc ever sold the crop on the McCrimmin farm or any part of it, but the facts are, that defendant J. E. Broussard received said crop, paid therefrom the water rates of two sacks per acre, and placed the remainder amounting to about 3583 sacks, of the value of $11,651.25 in the warehouses of the Beaumont Rice Mills, and that in all respects the averments contained in Section 3 of said original bill of complaint in this cause are false, except to the extent they conform to the allegation in this clause of defendants' answer.

20 (4)

As to whether the persons named in the fourth section of plaintiff's bill were creditors with allowed claims, these defendants are not advised; nor as to the filing of an inventory; and the facts relating thereto are neither admitted nor denied; as to the allegations that the defendant LeBlanc had at one time possession of the crop of rice on the McCrimmin farm, they are false. Defendants aver that when said alleged creditors began to contend that the McCrimmin rice crop was a part of the bankrupt estate, the said E. J. LeBlanc then realizing for the first time that he was being placed in an attitude of apparently representing two adverse claimants of the same property, tendered his resignation as trustee, but on the motion of said alleged creditors his tender was declined.

(5)

That exceptions were urged and passed upon as alleged. That exceptions to the report of the said E. J. LeBlanc, urged by said alleged creditors, objecting to his failure to inventory said McCrimmin crop as a part of the bankrupt estate, were passed upon adversely to the said LeBlanc as alleged, but not one of these defendants was a party to said proceeding, nor was the Beaumont Rice Mills, and the said LeBlanc only appeared in said proceedings in his capacity as an officer of Court, as trustee, and the said proceedings were administrative and not judicial, and went merely to the question as to whether he as trustee should have asserted claim to and inventoried said McCrimmin crop, and determined as between him and said creditors, that he, the said E. J. LeBlanc, had as trustee come into the possession of said rice crop and surrendered same to these defendants. That such determination could in no sense conclude these defendants, and they now here say that said E. J. LeBlanc never at any time claimed or actually had possession of said McCrimmin crop, and that while he used tools, implements, stock and labor of the bankrupt estate in harvesting and hauling same, yet it was not until there had been a distinct understanding between his representative and the Beaumont Rice Mills, through its manager, J. E. Broussard, that the latter should pay the customary price of such service. That on review of the judgment of this court, charging said LeBlanc as trustee with the value of said McCrimmin crop, it was held by the Circuit Court of Appeals that the
21 proceeding to charge LeBlanc as trustee was not a plenary suit, and in effect it was there decided that same was merely a proceeding to determine a question of administration and not of title.

(6)

Defendants admit that J. E. Broussard was a witness in said proceedings, and only such, and that he there testified that said McCrimmin crop belonged to the Beaumont Rice Mills by virtue of contracts and agreements entered into long before bankruptcy was contemplated by any person; but they deny that said transactions

were in any way lacking in good faith, and deny that all the evidence available in behalf of the Beaumont Rice Mills was educed on said hearing, and say they have abundant evidence of disinterested parties not adduced on said hearing to show that long before the Crimmin land was rented by the bankrupts, or either of them the crop upon it was destined for the Beaumont Rice Mills, the latter agreeing with the lessor to pay the rent upon that consideration, and the said crop being made possible only by the advancements made by the Beaumont Rice Mills under an agreement that same should be applied in discharge of a debt existing in favor of the Beaumont Rice Mills, all arranged for long before the said crop had even a potential existence; besides evidence that Beaumont Rice Mills surrendered liens upon other property of the estate, greatly to the advantage of same, on obtaining their right to the McCrimmin crop; and moreover on many points conclusive of any claim by said estate, these defendants will be able to educe additional evidence in their own support on a plenary trial. These defendants deny that they, through E. J. LeBlanc submitted their rights to the determination of the referee in said proceedings, and aver the fact to be that they were not parties to said proceedings, and that their firm was not, but that the proceeding consisted merely in a report by the said E. J. LeBlanc as trustee in bankruptcy with exceptions urged thereto by creditors; and they say they were never in any capacity parties, nor was their firm ever a party to any of said bankruptcy proceedings, and that neither of them ever filed a claim against said bankrupts, but that they considered their claims had been extinguished by the transfer to J. E. Broussard, in trust for them, of the said McCrimmin crop, the written evidences of which had been executed and filed for registration long before bankruptcy was contemplated by any one connected with the matter.

22

(7)

Defendants admit that the referee in bankruptcy held himself to be without jurisdiction as alleged; that a petition for review was prosecuted on which this court held the contrary, and determined that said crop came into the possession of said LeBlanc as trustee, and was of the value of $11,651.25, and that said trustee was thereupon ordered by this court to pay said sum within ten days into this court, who prosecuted both an appeal and a petition for superintendence and revision; defendants deny that said cause was heard upon the appeal, and aver the fact to be that the Court of Appeals held that no appeal lay since the action was not plenary, and that exercising only the right of superintendence and review in the matters of law, they affirmed the judgment of this court as acting upon LeBlanc in his capacity as trustee, and not as in any way concluding the rights of these defendants or their firm.

(8)

These defendants deny all that portion of the eighth section of plaintiffs' bill, which charges them with being indirectly parties to

the proceedings against LeBlanc as trustee, or exceptions to his inventory and account, and say the said charges are not true; it is true that these defendants after the termination of the above mentioned proceedings of creditors against said LeBlanc and the review thereof, filed in the District Court of Jefferson County, Texas, a suit of the kind described in the latter half of said 8th section. That a true copy of plaintiffs' petition in said suit, with the fiat of the judge of said state court, injunction bond, supplemental petition of plaintiffs therein, and answer of the said W. J. Crawford and others thereto, and certificate of the Clerk, are hereto annexed and made parts hereof. That each and all the allegations in the plaintiffs' original and first supplemental petitions therein are true, and that in connection with these averments the allegations of these defendants in said state court pleadings are here adopted and made parts hereof; that said E. J. LeBlanc at the time of commencement of said suit, was under orders of this court to deposit in some place, subject to the orders of this court, said sum of $11,651.25; that he had no sufficient means of his own for raising such sum, and no source of obtaining it except to take it from the funds of the Beaumont Rice Mills;
23 that the Beaumont Rice Mills not having been concluded by the order of this court, and same not directing LeBlanc to take their property, these defendants believed themselves at liberty to reject his claim of right to go into their partnership funds for said sum, and at their suit the said state court enjoined him from so doing, these defendants as plaintiffs therein having tendered into state court a sufficient sum, to abide the final determination as between them and said bankrupt estate of title to said McCrimmin crop; that after said state court injunction was granted, the defendants, willing to do the utmost that equity could require of them, actually deposited in the registry of said state court the said sum, amounting to $12,583; that thereafter the said E. J. LeBlanc presented his motion to this court, showing that he had been enjoined from taking the fund from the only source practically open to him for compliance with this court's order, and that these defendants as plaintiffs in said injunction had tendered the fund into the forum of their choice for trial of title thereto, and prayed that he might be excused from compliance with this court's order until the question of title could be settled in the State Court; That said motion was deferred until the April term of this Court, 1909; that in the meantime a motion was filed by said alleged creditors, Parlin & Orendorff and others to require the said LeBlanc to show cause why he should not be committed for contempt, to which motion the said E. J. LeBlanc filed answer showing the above facts as to the injunction and his inability to obtain the necessary fund without violating said injunction; that nevertheless this court ordered him, on the 9th day of April, 1909, to deposit said sum with the register of this court; that fearing commitment by this court said E. J. LeBlanc violated said state court injunction against the will and without the consent of these defendants, he drew funds of the Beaumont Rice Mills from their bank to the amount of $11,651.25 and interest, and deposited same in the registry of this court to take the course directed by said

order of April 9th, 1909, that is, to be paid over to such person as should succeed him as trustee, and to be deposited by such successor with the Gulf National Bank of Beaumont, thence to be paid out on claims proven against the bankrupts; that on the same day, April 9th, 1909, this court appointed Hon. W. J. Crawford, plaintiff herein, as such trustee; that on the same day these defendants gave written notice to said register, to said bank and to said W. J. Crawford, each in person, of the source from which the money de-
24 posited by the said E. J. LeBlanc had been obtained, and the violation of said State Court injunction involved therein; and thereafter filed their supplemental petition in said State Court suit, making the said bank and the said W. J. Crawford parties thereto, a copy of which is attached hereto; that thereafter said W. J. Crawford and said bank filed in said state court their exceptions, pleas and answer to the original and supplemental petitions of these defendants, and same were set down for hearing on pleas and demurrers for a certain day, and these defendants have entered into agreements with attorneys for said W. J. Crawford, as to the use of documents in evidence on trial of said cause when the temporary writ of injunction in this instant cause was served upon them, and at their request the said state court cause was continued generally. These defendants say they are ready to give the said W. J. Crawford a speedy trial of title to said rice crop, and that the District Court of Jefferson County in which same is pending, is open for trial of cause by agreement continuously from this time on, with intermissions of not more than one week at a time.

(9)

Defendants admit the averments contained in the 9th section of the original bill of the plaintiffs herein.

(10)

Defendants admit the averments contained in the 10th section of said bill are a part of the truth, which is fully stated in the 8th section of this answer.

(11)

These defendants say it is true as averred in the 11th section of said bill, that plaintiff has qualified as trustee in succession to E. J. LeBlanc and holds said fund, but defendants aver that his possession thereof was obtained wrongfully in violation of the 5th and 7th amendments to the Constitution of the United States, in that the unusual power of commitment for contempt was exerted to compel the said E. J. LeBlanc, as an officer of this Court, to use the power
he had as a member of defendants' firm, to deliver their funds
25 without an opportunity on their part to be heard, and without an opportunity to have their title tried by jury; after full and undisputed showing on the part of the said LeBlanc of his inability to obtain said fund from any other source than from funds in the possession of these defendants' firm, he has unqualifiedly

ordered by this court to produce same, and admonished that he would be committed if he did not do so.

(12)

The averments of the 12th numbered section of plaintiffs' bill are admitted.

(13)

These defendants admit that this court obtained the control of all the property of the said bankrupts when they were adjudicated bankrupts, except such as may have been previously delivered by them in pledge, or conveyed in trust to some third party, with power of disposition, and they aver that said bankrupts, long prior to their bankruptcy, had conveyed said McCrimmin crop to said J. E. Broussard in trust for the Beaumont Rice Mills, surrendering control of same to the said Broussard; That the said Beaumont Rice Mills and each and all of its members acquired their rights to said crop in good faith, for a valuable consideration, and without notice of any intent on the part of said bankrupts to prefer the Beaumont Rice Mills or any other person and without notice of any intent to defraud creditors, if there was such intent; and without reasonable cause to believe it was intended thereby to give a preference; and that said rights of the Beaumont Rice Mills were acquired before said crop had anything more than a potential existence; and in consideration thereof, advancements were made by the Beaumont Rice Mills of value greatly in excess of value of said rice crop at the time the advancements were made, as pointed out in said State Court pleadings of these defendants, and that creditors and this trustee who has been selected with a view solely with a view to this controversy, have only asserted a claim thereto on behalf of the estate after the
26 chances of the season have matured it into a value beyond the expectation of all the persons concerned; and that the said LeBlanc as trustee at all times conceded the ultimate title and present right of control thereof to the Beaumont Rice Mills, and never at any time sought to exercise control thereof as trustee, and that such conduct was begun on his part on behalf of the estate at a time when it was impossible to ascertain if said rice crop would be of value sufficient to cover the advancements made by Beaumont Rice Mills for rent of the land, seed, rice, water and necessaries used in its cultivation; that moreover, the said Beaumont Rice Mills at the time it acquired the right to said rice crop, and as part of the consideration therefor surrendered its claim of indebtedness against said bankrupts, which was then more than $6,000 in amount, and which was secured by lien on property of the bankrupts of the value of more than $3,000, consisting of wagons, plows, mules and implements, described in a mortgage of date Dec. 16th, 1904, from said E. F. Moore and F. W. Bridgeman; and that said property so released went to swell the assets of said estate for general creditors.

(14)

These defendants deny that the facts with reference to the ownership of said McCrimmin rice were well known to said LeBlanc at the time he qualified as trustee and say that he had only a general knowledge, the details not pertaining to this department of service; that it is true that these defendants were willing to take said property without an order of court, because they assumed no question would be made of their right so to do; they deny that they received same under the circumstances stated in plaintiffs' bill, and deny that they submitted their right thereto to adjudication by a referee, or by this court, or by the Circuit Court of Appeals, and say that neither they nor their firm have ever been parties to or represented in any proceeding where the *where the* title came in question, and say that in all previous proceedings where the said E. J. LeBlanc has appeared, he has been acting solely as an officer of the bankruptcy court, and in a position wholly inconsistent with his appearing for said Beaumont Rice Mills and that he was compelled to continue in said proceedings over his protest, and that in all the pro-
27 ceedings wherein decision was rendered against him, were taken after he had tendered his resignation as trustee, but while he was still compelled by the Court to act as trustee for said bankrupt estate.

(15)

These defendants admit the Beaumont Rice Mills received said McCrimmin crop, and aver that same was of right; that there is now withheld from them, pending determination of all issues relating thereto, the full value of same in each of the two said courts, the said district court having first and in due and orderly and lawful manner obtained such deposit; that said LeBlanc never at any time had control of said rice as trustee, or in any other capacity, and never could have obtained control of same as trustee; They admit that it was "prudent" for him personally to comply with the order of this court, if that means that he had no other alternative but to do that or go to jail; they aver that they never gave consent to the use of the partnership funds in making the deposit required by this court; that the fund of theirs which is now in the custody of this court, is wrongfully there in violation of the Constitution of the United States guaranteeing due process of law, and trial by jury, and in violation of the rules of comity; defendants deny responsibility for the alleged delay, and say they have always been ready to have a due and orderly trial of the rights herein involved and that the delay has resulted from creditors, who are now instigating this injunction, having insisted on prosecuting their inconclusive proceedings against said LeBlanc in his capacity as trustee rather than obtaining authority for some qualified representative of the estate to test title by plenary suit against these defendants; these defendants deny that they have ever been parties to any proceeding involving the title to said McCrimmin rice, save that now pending in said State District Court, which furnishes an opportunity for trial of the ques-

tions of fact before a jury of the vicinage, in a court having jurisdiction of both law and equity questions, and where the most speedy trial could be had with least expense to the parties.

28 Wherefore these defendants having fully answered, confessed, traversed and avoided or denied all the matters in said bill of complaint material to be answered, according to their best knowledge and belief, humbly pray this honorable Court to enter its judgment that these defendants be hence dismissed with their reasonable costs and charges in this behalf most wrongfully sustained, and for such further and other relief as, in the premises, reason may appear for.

J. M. HEBERT,
B. C. HEBERT,
L. HAMSHIRE,
J. A. BORDAGES,
M. S. HAMSHIRE,
J. E. BROUSSARD.

(Signed) By A. D. LIPSCOMB, *Solicitor.*

THE STATE OF TEXAS,
County of Jefferson:

I, J. E. Broussard, being duly sworn on oath say the matters of fact stated in the foregoing answer are within my knowledge truly and correctly stated.

(Signed) J. E. BROUSSARD.

Sworn to and subscribed before me this 6th day of July, A. D., 1909.

[SEAL.] WILL P. OLDHAM,
Notary Public, Jefferson County, Texas.

29 (Cover Page.)

EXHIBIT 1.

In the District Court of Jefferson County, Texas.

No. 7215.

J. E. BROUSSARD et al., Plaintiffs,
vs.
E. J. LE BLANC, Trustee, Defendant.

Index.

30 *Pl'ffs' Original Petition.*

THE STATE OF TEXAS,
County of Jefferson:

In the District Court of Jefferson County, Texas.

To the Honorable Judge of said Court:

J. M. Hebert, B. C. Hebert, L. Hamshire, M. S. Hamshire, J. A. Bordages, and J. E. Broussard, Plaintiffs, complain of E. J. LeBlanc, in his capacity as Trustee of the estate of Moore and Bridgeman, and E. F. Moore and F. W. Bridgeman, bankrupts, whose said estates are in course of administration in the District Court of the United States for the Eastern District of Texas at Beaumont, and represent and show to the Court:

1.

That all parties and the bankrupt above named reside in Jefferson County, Texas.

2.

The defendant, LeBlanc and the plaintiffs are associated together as partners under the firm name of Beaumont Rice Mills, conducting a large business of milling rough rice, and buying rough rice and selling milled or cleaned rice in Jefferson County, and shares of the association being divided upon a basis of $75,000 capital, and the defendant, Leblanc in his personal and individual capacity owning $2,000 of shares therein, or 2/75 of the entire business. That the plaintiff, J. E. Broussard is the general manager of the business of said partnership and as such having exclusive authority to act for it, except as he appoints other persons, whether members of the firm or not, to act for the firm in particular matters. That the position of said E. J. LeBlanc is that of clean rice distributor and the authority and power of said E. J. LeBlanc, as respects the business of said firm, is limited to the selling and distributing of clean rice, under the supervision and control of said Manager, and the said E. J. LeBlanc has no control or authority over the funds
31 of said partnership, except as may be incident to his position as clean rice distributor and salesman. That the full general power of management of all the business of said firm is vested in the said J. E. Broussard by agreement of the partners, and is manifest by their course of dealing and their advertisements for many years prior to all the matters herein stated, and the said arrangement was then and now is known to all persons dealing with said firm.

3.

That about the 1st day of January, 1906, E. F. Moore was indebted to the Beaumont Rice Mills in the sum of $6177.03 including indebtedness of said Moore and Bridgman which had been assumed by said E. F. Moore, or charged with his consent to his account.

That said E. F. Moore at said time was also greatly indebted to the Houston Rice Milling Company and others; That all of said indebtedness to the Houston Rice Milling Company and to the Beaumont Rice Mills was then due, and said Houston Rice Milling Company held a mortgage on nearly all, that is to say, probably 80 per cent, of the property of both said Moore and Bridgman, and had obtained a mortgage and contract whereby, as such creditors, they were to have the benefit of all crops to be raised during the year, 1906, by said Moore and Bridgman on about 1400 acres of land rented by said Moore from Catherine Stengle and situated in Jefferson County, the same being in consideration of further advancements of $6,000. to be made by the Houston Rice Milling Company for supplies necessary during said year; that the said E. F. Moore and F. W. Bridgman were then in a condition of insolvency, though not adjudged bankrupt, and their business was strictly that of rice farmers; that whether or not any creditor should obtain satisfaction or even part payments was then dependent upon whether or not said Moore & Bridgman should make crops; that it was impossible for them to make such crops without financial aid; that all probability for obtaining for satisfaction of debts any part of the said crop to be grown on said Stengle farm had been absorbed by the Houston Rice Milling Company, through its contracts with the said Moore and Bridgman and its liens arising under said contracts; that under said contract of Moore and Bridgman with the Houston Rice Milling Company, the former had obligated themselves to
32 cultivate at least 1100 acres of the Stengle farm in rice for the year, 1906, a quantity the cultivation of which would have consumed all the capacity of their teams and tools and their supplies, and it was contemplated that probably all the crop to be grown on said Stengle land would be absorbed in payment of the Houston Rice Milling Company.

4.

That in the above state of affairs the said E. F. Moore verbally stated to the said J. E. Broussard, as manager, as aforesaid, that he had obtained, or could obtain a lease of 280 acres of land on what was known as the McCrimmin farm, and that with an advancement of about $1000, for obtaining seed rice and other necessaries therefor he could be able to put said 280 acres in rice and manage to cultivate and harvest same, and that when marketed the rice thereon grown could be applied on the indebtedness of E. F. Moore to the Beaumont Rice Mills, this contemplating net proceeds after deducting the sums payable at and after harvest, including rent and water rates etc., that it was not then contemplated by either party that the net yield of the rice on said 280 acres would in any probability be sufficient to pay off what was then due to the Beaumont Rice Mills from said E. F. Moore, and nothing was then said as to the disposition of any possible surplus; that the proposition embraced in said statement was verbally accepted by the said Broussard on behalf of the said Beaumont Rice Mills, it being understood that the crop, whenever it should come to have any existence, or when the seed and

additional sums up to $1000, should be supplied therefor, should become the property of said J. E. Broussard, to be held by him as Trustee, the proceeds to be applied in payment of the indebtedness of Moore to the Beaumont Rice Mills, including the $1000, (or like sum) that the- advanced in seed in other like matters as above stated. That said offer was made and accepted at some time about January, 1906, it being contemplated that proper evidence of the agreement should be taken in writing when such advancement should be made.

That thereafter, to-wit, on or about the 5th of April, 1906, before the said 280 acre crop had any existence, and before even the seed therefor had been planted, the said E. F. Moore executed in writing a transfer of said crop on said 280 acres to said J. E. Brous-
33 sard, upon a nominal consideration of $1,000, but this consideration and purposes of said transfer were in truth and in fact as provided for in said proposition and acceptance above recited.

That said transfer was in words as follows:

"Know all men by these presents, that for and in consideration of the sum of one thousand ($1000.00) dollars, the receipt of which is hereby acknowledged, I, E. F. Moore have this day sold, transferred and conveyed to J. E. Broussard, all that certain rice crop grown and to be grown on a certain two hundred (and) eighty (280) acres of land rented of J. C. McCrimmin, being a portion of the Dan'l Easley survey, and being the same land that is described in a certain lease signed by J. C. McCrimmin and E. F. Moore on the 9th day of January, 1906, which lease had not been placed on record. It is understood and agreed that the said E. F. Moore shall harvest and deliver said crop of rice free of charge to the said J. E. Broussard at Beaumont, Texas.

Witness our signatures this the fifth (5th) day of April, A. D. 1906.

E. F. MOORE.

Witness-:

J. E. BROUSSARD.
J. H. HALEY.
J. J. HEBERT.

"Indorsed: 6586. E. F. Moore to J. E. Broussard. Chattel mortgage certificate. Filed for registration on the 28th day of May, 1906, at 11:30 o'clock and duly recorded in Book 7 of Chattel Mortgages on page 219 as No. 6586.

Given under my hand and seal of office, this the 8th day of June 1906.

[SEAL.] HAL G. LAND,
Co. Cl'k Jefferson County, Texas.
By J. R. JEFFERSON,
Deputy."

That thereafter, or at the same time the said J. E. Broussard as manager of the Beaumont Rice Mills supplied to the said E. F. Moore, seed for the said 280 acres of rice, and later and
34 before the adjudication in bankruptcy supplied other necessaries for cultivating said rice crop in a total sum exceeding $1000, and to wit, in the sum of $1139.80, that the said crop could not have had any existence but for the seed and supplies furnished as aforesaid by the said J. E. Broussard as Manager of the Beaumont Rice Mills, and same would not have been furnished but for the said agreement and assignment to J. E. Broussard in trust, and therefore the said transfer could in no sense be an injury to other creditors of the said Moore and Bridgman, within the provisions of the bankruptcy law against preferences.

That while it was contemplated that said Moore should give attention to said rice crop as a farmer, yet there was no agreement between the parties to said transfer that was inconsistent with its terms, transferring the ownership and control of said crop to the said J. E. Broussard, except that instead of being the ultimate and beneficial owner he the said Broussard was to hold said crop in trust for the purpose provided for in the verbal agreement above alleged, in pursuance and furtherance of which said transfer was made and executed.

That the said J. E. Broussard did in fact exercise the usual amount of control over said crop, that is to say, the amount of control usually exercised over other crops owned by him. That in pursuance of said parol agreement, the said J. E. Broussard as trustee, and as Manager for the Beaumont Rice Mills, had long prior to the execution of said written transfer assumed the obligation to pay the rent of said 280 acres for the year, 1906.

That about the 15th day of June, 1906, after the said rice had come up and received irrigation, the said J. E. Broussard having seen the crop agreed as manager of the Beaumont Rice Mills *to* with the said E. F. Moore that said crop should be taken in satisfaction of his indebtedness to the Beaumont Rice Mills, on condition that the said Moore should harvest same in as good manner as he had put it in.

That thereafter on or about the 16th day of July, 1906, the said Moore and Bridgman filed in said U. S. District Court their voluntary petition in bankruptcy, asking to be adjudged bankrupt. That the said 280 acres of rice was not listed therein as part of their estate, or as part of the estate of either. That the said Moore and Bridgman listed a mortgage claim in favor of the Beaumont
35 Rice Mills with securities in the shape of a mortgage on live stock and tools of the estimated value of $2500.00 said claim being therein stated at $9000, but the same was done without the knowledge of any person authorized to act for or to represent the Beaumont Rice Mills, and neither the Beaumont Rice Mills nor any person for it has ever asserted any claim against said estate in bankruptcy, but the said firm of the Beaumont Rice Mills and its manager have treated their claim as special, and as subsisting upon the said 280 acres rice crop in the name and control of J. E. Broussard, and

ever since said agreement of about the 15th of June, 1906, they have regarded and treated their claim as being limited to the said 280 acres of rice.

That about the 26th day of July, 1906, the said E. F. Moore and F. W. Bridgman and Moore & Bridgman were adjudged bankrupts and at the instance of the creditors of the bankrupts the said E. J. LeBlanc was appointed as trustee in bankruptcy. That while the said J. E. Broussard knew of this appointment at the time it was made, yet he then believed the law to vest him with the said J. E. Broussard with full control of the said 280 acres rice crop, and believed that the claim of his firm was limited thereto, whether said crop was to be regarded as having extinguished the debts of Moore or not, and petitioners say that so believing and relying on said transfer to J. E. Broussard they and their said firm permitted the time for proving up claims in bankruptcy to expire without ever having asserted a claim therein, and have permitted a lien held by them on certain live stock, implements and tools of the bankrupt estate to lapse under the bankruptcy law, altho said live stock, implements and tools were of the value of probably $3000, and altho said lien was valid and subsisting at the time of the bankruptcy but for the agreement above recited.

That at the time of the appointment of the said E. J. LeBlanc, he was wholly ignorant of any possible conflict of claim between his firm and the creditors for whose benefit he became trustee, and he never questioned the right of the said J. E. Broussard to control said rice crop on said 280 acres; that same was harvested and threshed and hauled for the said J. E. Broussard by the said bankrupts, using the teams and tools of the bankruptcy estate in part, and the usual and customary price was paid by the said Broussard to Trustee in Bankruptcy for harvesting threshing and hauling said rice, except as to hauling 364 sacks, the usual and customary price of which, to-wit, $36.80 is herewith tendered by petitioners. That
36 all of said rice grown on said 280 acres, to-wit, 4178 sacks of the weight of — pounds, was immediately after harvest taken in hand by the said J. E. Broussard as transferee, he having caused the firm of Beaumont Rice Mills to furnish sacks and all other things necessary therefor, and out of same he permitted the irrigation Company to take their two sacks per acre at the thresher as is their custom, said water rates amounting to 593 sacks and thus leaving 3585 sacks out of which he, as transferee in trust has paid the freight thereon, the threshing charges, the sacks for sacking same, cutting charges $3.00 per acre; the rents and the hauling charges and his detailed and itemized statement thereof is attached hereto and made part hereof as Exhibit "A" the same showing a net value of rice received from said 280 acres of $6337.79.

That notwithstanding all the foregoing there was conducted on the motion of creditors of said bankrupts a summary proceeding against said E. J. LeBlanc, Trustee in Bankruptcy, those petitioners not being parties thereto, wherein the value of said rice was determined, to be $11561.25, and said LeBlanc was ordered "to pay over and deposit to the credit of said estate of Moore and Bridgman,

bankrupts, the value of the said rice" there being no direction otherwise in said decree how and to whom he should pay it, and there being no other trustee of said estate except the said E. J. LeBlanc, his resignation of the office of Trustee having been tendered and by th referee rejected after said creditors began to contend that he, the said E. J. LeBlanc, should be charged as trustee with said rice.

That the said E. J. LeBlanc believing himself coerced thereto by the orders of the said court, is now claiming the right to withdraw from the funds of petitioners' firm the said sum of $11,561.25 and to place same in some bank to the credit of the bankrupt estate of Moore and Bridgman, or to deliver same to some such person as may be appointed as successor to him the said LeBlanc, as trustee in bankruptcy and will unless restrained act upon said claim of right greatly to the injury of petitioners and to the destruction of petitioners' said firm; that if said fund be taken into the hands of the said E. J. LeBlanc as trustee, petitioners believe that he will be forthwith ordered to pay same over to some successor in trust, or to some special master, who will then be directed to distribute same among creditors of said bankrupt estate, there being more
37 than 20 of such creditors whose claims have been proven.

That an injunction restraining such action would not in any way interfere with the process of the United States District Court, since its orders do not purport to reach the rice or its proceeds in the hands of the Beaumont Rice Mills, but only charge the said E. J. LeBlanc to account personally for the value of the rice as found by said decree.

That in said summary proceedings it was nowhere suggested that the powers and authority of the said E. J. LeBlanc were any less than those of an ordinary partner in respect of partnership business; that these petitioners were not parties to said proceedings; that to permit these petitioners to be deprived of their property by such summary proceedings, or to have their firm dissolved or wrecked thereby would amount to a deprivation of property without due process of law and in violation of the Fourteenth Amendment to the Constitution of the United States.

That the said orders of the District Court of the United States go no further than to make the said E. J. LeBlanc chargeable as trustee with said funds, impliedly subject to his being acquitted thereof if these petitioners show a better right in their firm of co-par-ners to the said rice than that of the said E. J. LeBlanc, as trustee. That these petitioners therefore tender this their offer to bring the proceeds of said rice into this court, and subject the same to the orders of this court in this suit between these petitioners and the trustee of said Bankrupt estate, or such successor as may be appointed for him, in lieu of the payment which has been required of the said E. J. LeBlanc.

Wherefore petitioners pray that the said E. J. LeBlanc may be cited to answer hereto; that pending a hearing the said E. J. LeBlanc may be restrained from withdrawing from partnership funds any part of same for application to the debts of Moore & Bridgman as proven up in bankruptcy; that upon final hearing petitioners upon

behalf of their said firm may be adjudged to have the best right to said funds, and that said injunction be made permanent, and that the petitioners may be authorized to withdraw the funds herein tendered by them, in case the actual deposit of same in court shall have been required at any stage of the proceedings; and petitioners pray for all such other relief, general and special, as in the premises reason may appear for.

A. D. LIPSCOMB,
Attorney for Petitioners.

38 STATE OF TEXAS,
County of Jefferson:

J. E. Broussard being duly sworn on oath says the facts set forth in the foregoing petition are within his knowledge true and correct.

J. E. BROUSSARD.

Sworn to and subscribed before me this 23d day of Feb. 1909.

[SEAL.]

WILL P. OLDHAM,
Notary Public, Jefferson County, Texas.

EXHIBIT A.

Statement of Receipts and Disbursements of J. E. Broussard, Trustee, in Respect of the 280 Acre Crop on the McCrimmin Land in 1906.

Advancements as per terms of contract with Moore for seed, feed, etc. for 1906..	1139.80	
Nov. 21, Three cars for rice (freight on)..	51.81	
Nov. 24, Threshing 4178 sacks at 30c....	1253.40	
Nov. 27, Three cars (freight on).....	53.37	
Nov. 27, A. L. Elles, Moore Bros.....	19.85	
Sacks for 4178 sacks rice.....	522.22	
Dec. 3, Three cars (freight on).....	71.91	
Cutting and shocking 270 acres.....	810.00	
Rent of land.....	813.00	
Dec. 10, two cars.....	31.20	
Hauling 3585 sacks rice.....	358.50	
Twine 1600 at 11½.....	184.00	
3585 bags rice at 3.25.....	.....	11,651.25
Net value of rice received.....	6341.80	
	$11651.25	$11,651.25

BEAUMONT, TEXAS, *March* —, 1909.

Having considered the foregoing petition, and it appearing that the plaintiffs are entitled to the relief prayed for, and that same will in no way conflict with orders of the U. S. District
39 Court, it is ordered that a writ of injunction be issued as prayed for, upon the plaintiffs entering into a bond, condi-

tioned and payable as provided by law, in the sum of Ten Thousand ($10,000.00) Dollars, and especially should said bond provide for plaintiffs and their sureties thereon to pay over to the defendant E. J. LeBlanc, or his successor in trust, such sum as may be adjudged against them, if any, in this cause. Provided further that plaintiffs will not further prosecute proceedings in this cause until a successor shall have been appointed for the defendant E. J. LeBlanc, or until further order of this court.

L. B. HIGHTOWER, JR.,
Judge of the Sixtieth Judicial District of Texas."

Endorsements: "No. 7215. J. E. Broussard, et al. vs. E. J. LeBlanc, Trustee. Filed March 12, 1909. B. T. Pipkin, Clerk, District Court Jefferson Co., Texas, By D. Gray, Deputy."

Bond for Injunction.

STATE OF TEXAS,
County of Jefferson:

Whereas in the case of J. M. Hebert, and others against E. J. LeBlanc, Trustee of the estate of Moore and Bridgman, pending in the District Court of the State of Texas, in Jefferson County, for the 60th Judicial District, the Honorable L. B. Hightower, Jr., Judge of said District, entered an order in Chambers at Beaumont, on the 12th day of March, A. D., 1909, granting an injunction as prayed for in the petition of plaintiffs, therein, and fixing the bond of the plaintiffs at Ten Thousand ($10,000.00) Dollars.

Now, therefore. know all men by these presents that we, J. M. Hebert, B. C. Hebert, L. Hamshire, M. S. Hamshire, J. A. Bordages and J. E. Broussard, as plaintiffs in said cause, as principals, and the other subscribers hereto as sureties are held and firmly bound unto *the* E. J. Le Blanc, and his successors in office as trustee of the estate of E. F. Moore and F. W. Bridgman, Bankrupt, in the sum of Ten Thousand ($10,000.00) Dollars, con-
40 ditioned that the plaintiffs will abide the decision which may be made in the said cause, and that they will pay the sum of money and costs that may be adjudged against them, or any of them if the injunction be dissolved in whole or in part.

Witness our hands this 12th day of March, A. D., 1909.

J. M. HEBERT,
B. C. HEBERT,
L. HAMSHIRE,
J. A. BORDAGES,
J. E. BROUSSARD,
Principals,
By A. D. LIPSCOMB, *Attorney.*
I. R. BORDAGES.
B. R. NORVELL.

Approved this the 13th day of March, 1909.

B. T. PIPKIN,
C. D. C. Jeff. Co., Tex.

Endorsements: 7215. J. E. Broussard et al. vs. E. J. Le Blanc et al. Bond. Filed March 13th, 1909. B. T. Pipkin, C. D. C. Jeff. Co. Tex."

Plaintiff's Supplemental Petition.

In the District Court of Jefferson Co., Texas.

No. —.

J. E. BROUSSARD et al.
vs.
E. J. LE BLANC et al.

Now, in the above styled cause comes the plaintiffs J. M. Hebert, B. C. Hebert, L. Hamshire, M. S. Hamshire, J. A. Bordages and J. E. Broussard, and with leave of the court file this their first supplemental petition for the purpose of making new parties and for the purpose of setting out new matter which has occurred since the filing of the original petition herein.

41 These plaintiffs complain of the defendant, E. J. LeBlanc and of the additional defendant, Walter J. Crawford, a resident of Beaumont, Jefferson County, Texas, and the Gulf National Bank, a corporation, having its principal office and place of business in Beaumont, Jefferson County, Texas, and represent and show to the court that since the filing of the original petition and since the granting of the temporary injunction herein the defendant E. J. Le Blanc has in violation of the injunction herein issued withdrawn from the funds of the Beaumont Rice Mills the sum of $12,486.15.

That on or about the 12th day of April, 1909, he the said E. J. LeBlanc, deposited the said sum with other, amounting in the aggregate to $13,131.50 with H. H. Haley of Jefferson County, Texas, who in turn paid same over to the defendant, Gulf National Bank, which said bank has turned the same over to the defendant Walter J. Crawford, or holds same under the joint control of itself and the said Walter J. Crawford.

That the said H. H. Haley, the said Gulf National Bank and the said Walter J. Crawford at the time of receiving said funds each had full notice in writing given to them by these plaintiffs showing the source from which and the circumstances under which the defendant E. J. LeBlanc had withdrawn said funds as above recited. That since the 12th day of April, 1909, the defendant E. J. LeBlanc has been discharged from the position of Trustee in Bankruptcy which he held at the time of the filing of the original petition herein, and the defendant Walter J. Crawford has been appointed as trustee to succeed the said E. J. LeBlanc as Trustee in Bankruptcy of the estate of the bankrupts Moore and Bridgman more fully described in the petition herein filed.

Plaintiffs show to the court that since the filing of the original petition herein they plaintiffs have deposited in this court the sum

of $11,561.25 with interest thereon from the 17th day of December, 1907 at the rate of 6 per cent. per annum.

Wherefore, the plaintiffs pray that the said defendants the Gulf National Bank and Walter J. Crawford be cited to answer to this supplemental petition as well as plaintiffs' original petition, and that upon hearing the plaintiffs have judgment against all and each of the said defendants for the sum of money so withdrawn by the said E. J. LeBlanc and deposited with the said defendants, the Gulf National Bank and Walter J. Crawford, and for costs and for all such relief as in the premises reason may appear for, including whatever process or remedy may be necessary to obtain the observance of said injunction by the additional defendants.

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A. D. LIPSCOMB,
Attorney for Plaintiffs.

Endorsed: "No. 7215. J. E. Broussard, et al. vs. E. J. LeBlanc et al. Supplemental petition making new parties to original petition and setting up new matter occurring since the filing of suit. Filed April 20th, 1909. B. T. Pipkin, Clerk District Court of Jefferson Co., Texas. By D. Gray, Deputy".

Pleas and Answers of Crawford and the Gulf National Bank.

In the District Court of Jefferson County, Texas, 60th Judicial District.

No. 7215.

J. M. HEBERT et al.
vs.
E. J. BLANC et al.

Now come the defendants Walter J. Crawford, trustee, and the Gulf National Bank, and for their answer to the plaintiff's original and supplemental petition say:

1.

They except thereto because neither of said pleadings contain facts sufficient to constitute a cause of action against either of these defendants which this court has jurisdiction to try; and of this they pray the judgment of the court.

2.

Defendants specially except to said original and supplemental petition because it is shown by the allegations thereof that this court has no jurisdiction of the matters in controversy in this action. It appears from the allegations of said petition that the estates of Moore & Bridgman, bankrupts, are being administered in the Honorable U. S. District Court for the Eastern District of Texas, at Beaumont. That the fund sought to be reached

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in this action is a part of the estate of said bankrupts. That the same was paid to the defendant, Walter J. Crawford, Trustee in Bankruptcy, in obedience to the judgment and decree of the U. S. District Court, as a part of the estate of said bankrupts, and that said sum was deposited to the credit of the defendant, Walter J. Crawford, Trustee, in the defendant, Gulf National Bank, in obedience to said judgment and decree, where it is now held as a part of the estate of said bankrupts, and that no court has any jurisdiction over said funds or these defendants in reference thereto save and except the said U. S. District Court for the Eastern District of Texas. That the plaintiffs herein can have all the matters complained of in their said petition adjudicated in said U. S. District Court if they have any claim to said fund, and that this court is without any jurisdiction to determine any claim the said plaintiffs have or pretend to have thereto. Of all of which they pray the judgment of the Court.

U. F. SHORT AND
SPOTTS & MATHEWS,
Attorneys for said Defendants.

And if their above exceptions are overruled, then said defendants present this their plea to the jurisdiction of this court over them or over the matters alleged in the plaintiff's said original and supplemental petition, and say:

I.

That these defendants allege that on July 16th, the firm of Moore & Bridgman, a partnership composed of E. F. Moore and F. W. Bridgman, and E. F. Moore and F. W. Bridgeman as individuals, were adjudged and declared bankrupts by the United States District Court for the Eastern District of Texas, at Beaumont, sitting in bankruptcy, and by the Honorable John Broughton, one of the referees in bankruptcy of said court, and on the 30th day of July, 1906, the said John Broughton, as referee as aforesaid, appointed the said E. J. LeBlanc Trustee in bankruptcy of the estates of Moore & Bridgman, and said E. F. Moore and F. W. Bridgman as in-
44 dividuals, who on to-wit, the same day duly qualified as such Trustee and continued to act as such trustee until his resignation as such was accepted by said United States District Court on, to-wit, the 9th day of April, 1909 and thereafterwards on the — day of April, 1909, this defendant, Walter J. Crawford was appointed by said Referee Trustee in Bankruptcy of said estates and duly qualified as such, and has and had no other possession or control of the money alleged to have been so paid by said LeBlanc to H. H. Haley, than such as he has as Trustee as aforesaid, the said Haley being Deputy Clerk of said United States District Court, he having received said money as such Deputy Clerk, being authorized so to do by said District Court as hereinafter shown. That long before any of said moneys went into the hands of said Gulf National Bank it had been by an order of said United States District Court designated as one of the depositaries for the money of bankrupt estates and by an order

of said Court made on, to-wit, the 9th day of April, 1909, the said H. H. Haley was directed to pay over to it, the said Bank, the said money to be paid to him, the said Haley, by said LeBlanc, and it, the said Bank has and had no other possession or control thereof than such as it has or had as such depositary and such as it has and had by reason of said order of Court directing the payment thereof, to it, the said Bank, and these defendants have since the payment of such money been — are now responsible to said United States District Court for the safe keeping of said money and the disbursement thereof under its orders, which court alone has jurisdiction to determine what disposition shall be made of said moneys, as these defendants are informed and believe and therefore allege.

II.

That while said bankruptcy proceeding was pending a controversy arose between certain creditors of said bankrupts of the one part and the said LeBlanc as Trustee, he then being a member of said firm of Beaumont Rice Mills, in which said creditors attacked the account of said LeBlanc as such trustee and claimed that the rice raised on the McCrimmin farm tract of land mentioned in plaintiff's said petition was the property of the said bankrupt estates and alleged a conspiracy between the plaintiffs herein, the said bankrupts and the said LeBlanc as such trustee to defraud the said bankrupt
45 estate and the creditors of said Bankrupts of the said rice crop and the value thereof, which rice crop the said creditors alleged had gone into the possession of said LeBlanc as such trustee, and a copy of the motion of said creditors wherein their contentions are set forth is hereto annexed marked exhibit "A" and asked to be taken and considered as a part of this pleading. That on February 4th, 1907, the said LeBlanc filed with said referee his reply to said motion wherein he set up substantially the same matters as are set forth in the plaintiff's original petition herein, and alleged that said United States District Court had never acquired jurisdiction over said rice crop and could not try the title thereof, in that proceeding, and prayed that he be not required to answer to so much of said motion as sought to have that court to adjudicate the title to said rice crop to which said answer the plaintiff J. E. Broussard made oath stating that he was a member of the partnership known as the Beaumont Rice Mills and that the matters stated in said reply were true. That the issues raised by said motion and the reply thereto were tried and heard before the said Referee, and on such hearing among the witnesses who testified in behalf of said LeBlanc were the said Moore, Bridgman, the plaintiff J. E. Broussard, and J. J. Hebert the book-keeper of plaintiffs, and a relative of some of plaintiffs. That said hearing having been concluded the said referee announced and filed his conclusions of law and fact and rendered his judgment thereon. That some of said creditors of said bankrupts presented to said United States District Court their petition for review of said judgment, and the same having been heard on December 17th, 1907, the Court found that said E. J. LeBlanc as such Trustee came into the possession of said rice crop, that it was a part of the property be-

longing to the estate of said Bankrupts, that said LeBlanc as said trustee should have been charged in his account with the value thereof, that there was 3585 sacks of rice of said rice crop, after paying the water rent out of same which was of the value of $11,651.25, and that the said LeBlanc should be further charged on his account with the sum of $345.20 received by him from one Earl Keener, and the said United States District Court on said December 17 1907, rendered its judgment in said cause and hearing wherein it was adjudged and decreed that the said LeBlanc, Trustee be and was thereby directed to pay over and deposit to the credit of the estate of Moore & Bridgman, bankrupts, the value of said rice, and the sums
46 received from said Keener aggregating $11,906.45 within ten days from that date, a copy of which judgment is hereto annexed marked "Exhibit B" and asked to be taken as part of this pleading. That from said judgment the said LeBlanc appealed to the United States Circuit Court of Appeals for the 5th circuit, and presented to said last named court his petition for superintendence and revision, by which court the said judgment of said United States District Court was on Jan. 26th, 1909, affirmed. That the mandate of said Circuit Court of Appeals was filed in said United States Court on the — day of March, 1909, and on the 3rd day of April, 1909, said LeBlanc not having paid or deposited said sums of money as directed, some of said creditors of said bankrupts filed in said United States District Court their motion for a rule upon said LeBlanc to show cause why he should not be punished for contempt for refusing to obey the order of said last named court made on December 17th, 1907, directing the payment and deposit of said moneys, which motion together with the reply of said LeBlanc thereto came on to be heard in said United States District Court on the 9th day of April, 1909, when said motion was sustained, and it was by said court last mentioned ordered and adjudged that the said E. J. LeBlanc, trustee, be and was thereby directed forthwith to pay over said sum of $11,906.45, together with interest thereon from Dec. 27th, 1907, at the rate of 6% per annum, to H. H. Haley, Deputy Clerk of said last named Court, who, by said judgment was directed upon payment of said sum by said LeBlanc to deposit the same with the said Gulf National Bank of Beaumont, there to *beld* and retained until the successor of E. J. LeBlanc, Trustee, who had resigned his trust, should be elected and qualified, in which event the said Clerk should pay the same to such trustee, a copy of which last mentioned judgment is hereto annexed marked "Exhibit C" and asked to be taken and considered as part of this pleading.

That afterwards said sum of money directed by said last mentioned judgment to be paid by said LeBlanc was by him paid to said H. H. Haley, Deputy Clerk as aforesaid, who deposited the same in said Gulf National Bank where it now remains to the credit of the account of the defendant, Walter J. Crawford as Trustee as aforesaid, and subject to the orders and control only of the said United States District Court, to which court the plaintiffs should as these defendants are informed believe and therefore allege
47 be required to resort to obtain said moneys or any part thereof to which they may be entitled. And these defendants say

they are advised that the said United States District Court having obtained jurisdiction and control of said moneys and caused the same to be placed in the possession of these defendants as its agencies this court cannot enquire as to whether such jurisdiction, control and possession has been rightfully obtained, or if this court should have jurisdiction as to the rights of the parties hereto to the said rice crop, still as a matter of sound discretion and comity it should not attempt to adjudicate the issues as presented in this cause, or take or retain jurisdiction of this cause as against these defendants.

U. F. SHORT AND
SPOTTS & MATHEWS,
Attorneys for the Defendants. Walter J. Crawford, and Gulf National Bank.

Walter J. Crawford being sworn says that the matters and things stated in the foregoing plea are true, except those stated upon information and belief, and those so stated upon information and belief he believes to be true.

WALTER J. CRAWFORD.

Subscribed and sworn to before me this 7th day of June, 1909. Witness my signature and seal of office the day and date last above named.

[SEAL.] LEON SONFIELD,
Notary Public, Jefferson County, Texas.

P. B. Doty being sworn upon his oath says that he is Cashier of the Gulf National Bank of Beaumont and authorized to make this affidavit, and the matters and things stated in the foregoing plea are true except those stated upon information and belief, and those so stated upon information and belief he believes to be true.

P. B. DOTY.

48 Subscribed and sworn to before me this 7th day of June, 1909.

Witness my signature and official seal hereto affixed on the day and date last above named.

[SEAL.] LEON SONFIELD,
Notary Public, Jefferson County, Texas.

And, further answering these defendants say that on or about the 16th day of July, 1906, E. F. Moore and F. W. Bridgman, partners doing business under the firm name and style of Moore & Bridgman, filed their voluntary petition in bankruptcy in the U. S. District Court for the Eastern District of Texas, at Beaumont, and were duly adjudged bankrupts. That it appears from the schedule of liabilities filed by said bankrupts that the Beaumont Rice Mills, a firm composed of J. M. Hebert, B. C. Hebert, L. Hamshire, M. S. Hamshire, J. A. Bordages and J. E. Broussard, and E. J. LeBlanc, were creditors of said bankrupts, to the amount of $9000 to secure the payment of which the said creditor held a chattel mort-

gage. That the Houston Rice Mills was also a creditor of said bankrupts. Defendants state that the Parlin & Orrendorff Company and Parlin & Orrendorff Implement Company, corporations existing under the laws of the State of Illinois, were also creditors of said bankrupts. That the said bankrupts at the time of said adjudication were the owners of a lot of mules, wagons, harness and scrapers located at the time in the State of Louisiana. That the Parlin & Orrendorff Implement Company had at the same time sued out a writ of attachment in the State of Louisiana against the said Moore & Bridgman, and caused a number of mules, wagons and harness to be seized under writs of attachment, and the said property was held by the Sheriff of St. Landry Parish in the said State of Louisiana, at the time the said petitions in bankruptcy were filed. That the said bankrupts and the said Beaumont Rice Mills were anxious to defeat the said Parlin & Orrendorff Company in the collection of its debt, and to have the property seized under said writs of attachment restored to said bankrupts and returned from the State of Louisiana. That the said bankrupts were, when said writs of attachment were levied, and at the time the said petitions in bankruptcy were filed the owners of crops of rice grown on two farms in the County of Jefferson and State of Texas. That one of said farms was known as the Stengle farm, and consisted of about 1180 acres of land, all of which was being cultivated in rice, and
49 which was pledged by a chattel mortgage to secure the Houston Rice Mills to secure the debt owing by said bankrupts to said Houston Rice Mills. That said bankrupts were also cultivating a crop of rice consisting of 280 acres of land belonging to one McCrimmin, which was not pledged, as these defendants are advised and believe, to secure any portion of the indebtedness of the said bankrupts but was the property of the said Moore and Bridgman. That in order to defeat the Parlin & Orrendorff Company in the collection of its debt and to have said property held under writs of attachment restored to said defendants, and in order to defeat all the creditors of the said Moore & Bridgman in the collection of their debts to the extent of the rice grown on the McCrimmin farm, the said bankrupts and the said Beaumont Rice Mills entered into a conspiracy by which it was agreed that the said Moore & Bridgman would file their voluntary petition in bankruptcy, well understanding that the said writ of attachment which had been sued out within four months before the filing of said petition would be annulled thereby, and it was agreed that the said Beaumont Rice Mills would manage to have one of the partners in said firm appointed trustee in bankruptcy, who after qualifying as such would receive all the property of said bankrupts, including the teams held under attachment, and that the crop of rice grown on the McCrimmin tract of land would be withheld from the schedule of assets, and would be concealed by the trustee and said crop of rice appropriated to the use of said bankrupts, and the said Beaumont Rice Mills.

That in pursuance of said fraudulent conspiracy the plaintiffs herein managed to have the defendant, E. J. LeBlanc appointed trustee of said estate, and that after duly qualifying as such and by

giving his bond, with the plaintiff, J. E. Broussard, as security thereon, he proceeded to take charge of all said property and to manage and control it ostensibly under the order of the court, but in fact without any reference to the court or his appointment as trustee.

That the said McCrimmin rice was withheld from the schedules filed by said bankrupts, yet nevertheless, the said E. J. LeBlanc, trustee went into possession thereof. That instead of taking charge of all the property and effects of said bankrupts, he permitted them to remain in the possession thereof, as if no adjudication had been made, and that said bankrupts remained in possession of all the property which they had theretofore owned and managed, and used the same at greater advantage than if no such adjudication had been made.

50 That all the property held under the writs of attachment by the Parlin & Orrendorff Company were discharged from the levies upon which the same were held, and were ostensibly delivered to the said E. J. LeBlanc, trustee, but were in fact delivered to the said bankrupts. That said E. J. LeBlanc, trustee, permitted said bankrupts to purchase supplies of every kind, including their tobacco and other personal expenses, and pay for same out of the property and effects of said estate. That he placed the said E. F. Moore and F. W. Bridgman their wives and the children of said Moore upon the payrolls with extravagant salaries, and paid them sums of money which they never earned. That the said E. J. LeBlanc, trustee, undertook to harvest the crops of rice grown on the said McCrimmin tract of land and the Stengle tract, and permitted E. F. Moore, one of said bankrupts, to appropriate large sums of money out of the rice which was harvested and sold by fictitious owners, all to the *determine* and loss of the creditors of said bankrupts.

That as a part of said conspiracy to defeat the creditors of said bankrupts, the said Moore and Bridgman and the said E. J. LeBlanc after harvesting the said crop of rice grown on the McCrimmin tract of land turned the same over to the Beaumont Rice Mills, a firm in which the said E. J. LeBlanc was a partner, and well knowing that said crop of rice belonged to said bankrupts and was a part of the estate which came into his possession as trustee, yet he, the said E. J. LeBlanc appropriated the same to his own use and to the use of said partnership, and concealed the fact from the court which had appointed him trustee, and from the creditors of the said bankrupts. That said property in fact belonged to the estate of said bankrupts. These defendants state that the said E. J. LeBlanc, Trustee, undertook to resign his trust and for that purpose filed his written resignation before the Honorable John Broughton, Referee, and with said resignation filed an account of the administration of the estate of said bankrupts. That the Parlin & Orrendorff Company and Parlin & Orrendorff Implement Company and other creditors of said bankrupts who were interested in said estates filed their exceptions to the account of the said E. J. LeBlanc, trustee, amongst other things alleging that the crop of rice grown on the McCrimmin land consist-

ing of 4178 sacks and of the value of $11,561.25 was the property of said bankrupts, and that the same had come into the pos-
51 session of said trustee as such; that he had taken charge thereof and converted the same to his own use and to the use of the Beaumont Rice Mills, and that he should be charged with the value of the same in his account.

That upon the hearing of said exceptions before the Honorable David Bryant, Judge of the U. S. District Court for the Eastern District of Texas, upon the petition for review it was ascertained and determined and the said U. S. District Court ordered, adjudged and decreed that said crop of McCrimmin rice, consisting of 4178 sacks, and of the value *of* above stated, was the property of Moore and Bridgman, bankrupts, at the time they filed their petition in bankruptcy; That the same had come into the possession of the said E. J. Le Blanc, trustee, and that he was liable for the value thereof, and was charged therewith by the judgment and decree of said court.

That afterwards, the said E. J. Le Blanc, trustee, filed his petition for review in the Honorable U. S. Circuit Court of Appeals for the Fifth Circuit at New Orleans, which said Court upon a hearing of said petition for review, affirmed the decision of the lower court. That afterwards a motion for a rehearing was filed by said trustee in the said Court of Appeals, which was by the Court overruled, and upon the return of the mandate in said cause to the lower court the said U. S. District Court of the Eastern District of Texas ordered and directed the said E. J. LeBlanc, trustee, to pay said fund to H. H. Haley, Clerk of the U. S. District Court at Beaumont to be thereafterwards paid to the trustee of the said Moore & Bridgman, bankrupts, to be appointed to succeed the said E. J. Le Blanc, resigned, and that in obedience to said order the said E. J. Le Blanc did pay the sum of money mentioned in the order and decree of the said U. S. District Court to H. H. Haley, Clerk, and thereby discharged the judgment rendered against him by said U. S. District Court.

That afterwards the defendant, Walter J. Crawford, was appointed trustee of the estate of said Moore & Bridgman bankrupts, and after duly qualifying as such received said fund from the said H. H. Haley, Clerk, in obedience to the order and judgment of said court, and deposited the same with the defendant, Gulf National Bank, who now holds all said fund to be administered as the property of said bankrupts in due course of administration.

52 These defendants aver that they have nothing whatever to do with any difficulties existing between the partners, heretofore mentioned, doing business as such under the name of the Beaumont Rice Mills, and that they have no concern whatever about any contentions that have arisen between them about raising the funds necessary for the said E. J. Le Blanc to discharge the judgment which was rendered against him as trustee by the said U. S. District Court with the fund in their hands as receiver, as heretofore stated, for the account of said bankrupt estate. That in the contest hereinbefore mentioned between the said E. J. Le Blanc, trustee, and the creditors of said bankrupts said fund was ascertained to be the property of said bankrupts. They aver that if the plaintiffs

herein have any right thereto or interest therein that the U. S. District Court for the Eastern District of Texas alone has the jurisdiction to hear and determine any controversy which they choose to make therein; and having fully answered, these defendants pray to be dismissed hence with judgment for their costs; and for all proper relief.

U. P. SHORT AND
SPOTTS & MATHEWS,
Attorneys for Defendants,
Crawford and Gulf National Bank.

And if their said exceptions and pleas to the jurisdiction of this court should be overruled or be not sustained, the said defendants, Walter — Crawford and Gulf National Bank further answering say:

1.

They except to plaintiffs' said petition and supplemental petition and say that they show no cause of action against these defendants.

2.

They especially except to that part of the original petition wherein it is alleged that the said E. J. Le Blanc is claiming the right to withdraw the sum of $11,561.25 from the funds of plaintiff- and will act upon said claim of right to the injury of petitioners unless restrained from such action, because such allegations are indefinite and uncertain, and do not amount to a charge that unless
53 said Le Blanc be restrained he will withdraw said sum from the funds of plaintiffs, and because other allegations of said petition show that said Le Blanc has or had no control over or access to the funds of plaintiffs, and that he could not possibly withdraw said sum from said funds without the consent of the plaintiffs.

3rd.

These defendants further specially except to that part of said petition wherein it is pleaded that on April 5th, 1906, E. F. Moore made to J. E. Broussard for the benefit of plaintiffs a transfer of or mortgage of the rice crop on the McCrimmin land, and that thereafterwards the plaintiffs took said rice crop from the said Moore in satisfaction of his indebtedness because it appears from said petition that from January 1st, 1906 to July 16th, 1906, the said E. F. Moore and Moore & Bridgman were insolvent, that such insolvency was during the time known to plaintiffs and that on said last named day the said E. F. Moore and F. W. Bridgman were adjudged to be bankrupts, and that said transfer or mortgage to plaintiffs and the taking by plaintiffs of said rice crop was in violation of section- 3 and 60 and other provisions of the bankrupt laws of the United States, whereupon these defendants say that the rights of plaintiffs with respect to said rice crop cannot be enquired into in this action, especially as it is shown by said petition that said bankruptcy proceedings are still pending.

4th.

And these defendants specially except to that part of said original petition wherein the plaintiffs base their claim to said rice crop, at least in part, upon the alleged fact that believing the law vested in them full control of said rice crop, they after the said adjudication of bankruptcy took possession and thereafterwards converted the same to their use, because under those and other facts alleged in said petition the said rice crop on such adjudication and the appointment of a trustee became the property of said Le Blanc as such trustee who had at least constructive possession thereof and was entitled to the actual possession thereof.

54 And of each and all of said exceptions these defendants pray the judgment of the court.

U. F. SHORT AND
SPOTTS & MATHEWS,
Attorneys for the Defendants Walter J. Crawford and Gulf National Bank.

And if said pleas to the jurisdiction of this court and the above exceptions are overruled, these defendants further answering deny all and singular the allegations in said petition contained and of this they put themselves upon the country.

U. F. SHORT AND
SPOTTS & MATHEWS,
Attorneys for Defendants Walter J. Crawford and Gulf National Bank.

And for further answer these defendants say they adopt as part of this their answer, without restating the same all the allegations contained in their foregoing pleas to the jurisdiction of this court and ask that the facts alleged in said pleas be treated and considered as here again alleged as part of this answer, and pray that upon hearing hereof it be adjudged that plaintiffs take nothing by their action against these defendants and that these defendants have judgment for their costs and have such other and further relief, general and special as may be just and proper in the premises.

U. F. SHORT AND
SPOTTS & MATHEWS,
Attorneys for Defendants Walter J. Crawford and Gulf National Bank.

55 EXHIBIT "A."

In the United States District Court for the Eastern District of Texas, at Beaumont.

No. 149. In Bankruptcy.

In Re Estate of MOORE & BRIDGMAN, Bankrupts.

Now comes the Parlin & Orrendorff Company, Parlin & Orrendorff Implement Company, the Houston Rice Milling Co. and L. W. Levy & Co., a company and firm composed of L. W. Levy and Ben Sass, and respectfully represent to the court that they are each creditors of E. F. Moore and F. W. Bridgman, bankrupts; that their respective claims have been presented and allowed, and that they are interested in the administration of the estate of said bankrupts as such creditors.

In reply to the resignation of E. J. Le Blanc, Trustee, said creditors represent that the considerations of propriety and decency that have influenced said trustee to resign as Trustee, ought to have prevented him from accepting same in the beginning; that all the facts which have influenced his present action were well known to him at the time he was appointed trustee and accepted said appointment, and entered upon his duties as such Trustee.

The Parlin & Orrendorff Company, denies that it has ever at any time contended that the Beaumont Rice Mills, in which said trustee is a partner, claims the 270 acres of rice and the threshing outfit and machinery by mortgage voidable in law, because it established a preference in favor of the Beaumont Rice Mills. It, and all the creditors above named, says, that they now aver, that the sale claimed to have been by said Bankrupts to the said Beaumont Rice Mills, of the 270 acres of rice and threshing machinery mentioned in said resignation, is a fraud pure and simple; that no such purchase was ever made by said Beaumont Rice Mills of said property, and that the sale now claimed is fictitious and a pure fabrication.

They aver that prior to the filing of the petitions in bankruptcy by Moore & Bridgman, a partnership, composed of E. F.
56 Moore and F. W. Bridgman, that the said Beaumont Rice Mills conspired and confederated with said Bankrupts to cheat and defraud their creditors and prevent them from collecting their debt in the manner following:

The said Beaumont Rice Mills and the said Bankrupts agreed to make it appear that the said 270 acres of rice and the said threshing machinery mentioned in said resignation had been sold by said bankrupts to said Beaumont Rice Mills before the filing of said petition in bankruptcy; that said property should be withheld from the schedules of assets, and should be concealed in the name of the Beaumont Rice Mills, pending the administration of the estates of said bankrupts in bankruptcy, and the proceeds of such sales divided between the said Beaumont Rice Mills and said Bankrupts, in what proportion said creditors do not undertake to say, but they aver that

the said was to be divided between the said conspirators. They further aver that the said rice machinery was to be turned over after the administration of said estates in bankruptcy to the said Moore & Bridgman, who would thereafterwards remain owners of the same, as they had been before the filing of the petition in bankruptcy; that under and in pursuance of said agreement and said fraud and conspiracy the said E. J. Le Blanc became the trustee of the estates of said bankrupts; that after qualifying according to law he took charge of all the property and effects of said bankrupts, including the threshing machinery and rice crops, above mentioned, that he permitted said bankrupts, however, to remain in charge thereof; that they harvested all rice grown on said 270 acres of land which these creditors aver was in fact 280 acres, and took the said rice in his possession; that he realized from said harvest 4440 sacks after paying the rent of said land and other charges thereon, which was paid in kind as these creditors are informed and believe, and now charge that said rice was reasonably worth $17,000.00 and is now in possession of said trustee and said bankrupts in pursuance of said fraud and conspiracy. That said rice machinery as above described, is still in possession of said trustee, and that said rice and machinery really belong to the estates of said bankrupts. They, therefore, aver that the said trustee should be charged in his account with the value of said rice, and with said rice machinery, if it shall appear upon examination of said accounts and inquiry into any disposition that he has made of the same, that said property, or any part of it has been disposed of for the benefit of said conspirators.

57 These creditors deny that the account filed by said trustee is a just and true account of the property and effects and expenses of the estates in his charge. They say that in addition to the 280 acres of rice which he has withheld from said account, that the crop upon the Stengle farm, which is a part of said bankrupt estate was much greater than is reported by said Trustee; that the harvest yielded, as these creditors are informed and believe, 10,000 sacks, instead of 3,682 sacks, as reported by said Trustee, and that said trustee should be charged with the additional amount for which he has failed to account in the report made of his administration. They further deny that the account filed is a correct one of the outlay which he was compelled to incur on account of said estate, and they deny each and every item thereof, that whilst said trustee did justly incur a large outlay in harvesting and gathering the crop of rice, they deny that he incurred such an expense as is reported by him. They aver that three thousand dollars would have been an ample outlay to have secured all the property and harvested the entire crop of said bankrupts instead of about the sum of $11,000.00 which the report of the said expenses aggregate. The charge upon information and belief that the accounts for labor filed by said trustees are in a large measure fictitious and fraudulent, that sums of money are charged to have been expended for labor were greatly in excess of the sums really paid or earned, all of which they are ready to verify.

They pray that said trustee may be required to account for all the

property which came into his possession and which is withheld from said report, and that the account which he has filed of the expenses of his administration be carefully examined and that said trustee be allowed credit only for the sums which are just and reasonable and necessary to the administration of said estates, and that he be required to pay the balance ascertained to be due into the registry of the court, and for all such other and further relief as to the court may seem just and proper in the premises, and as in duty bound they will ever pray.

PARLIN & ORRENDORFF COMPANY AND
PARLIN & ORRENDORFF IMPLEMENT CO.,
By U. F. SHORT, *Att'y.*
HOUSTON RICE MILLING COMPANY,
By J. W. PARKER, *Attorney.*
L. W. LEBY & CO.,
By EUGENE A. WILSON, *Att'y.*

58 EXHIBIT "B".

In the District Court of the United States for the Eastern District of Texas, at Beaumont.

No. 149. In Bankruptcy.

In the Matter of MOORE & BRIDGMAN, Bankrupts.

DECEMBER 17TH, 1907.

This day came on to be heard the petition for review of the judgment of the Honorable John Brughton Referee, upon the account of E. J. Le Blanc, Trustee, presented and filed by Parlin & Orrendorff Company, the Parlin & Orrendorff Implement Company and L. W. Levy & Co. each of whom are creditors of the said Moore & Bridgman, bankrupts, and the court having fully heard and considered the account of the said trustee, and exceptions filed thereto by the creditors above named, and objections urged by them to the judgment of the said Referee, and being fully advised in the premises is of the opinion that said E. J. Le Blanc, Trustee, came into the possession of the crop of rice grown on the 270 acres of land which were cultivated by the said bankrupts, known as the McCrimmin tract; and that said crop of rice was and is a part of the property belonging to the estate of said bankrupts, and that said E. J. Le Blanc, trustee, should have been charged in his account with the value thereof; that said crop of rice constituted of 3585 sacks of rice, after paying the water rent, and of the value of eleven thousand six hundred and fifty one dollars and twenty five cents.

The court further finds that there was paid to the employés and representatives of the said E. J. Le Blanc, trustee, by one Earl Keener, for threshing, the sum of Three Hundred Forty Five and 20/100 dollars, with which said sum the said E. J. Le Blanc should be charged and held responsible in his account as such trustee.

It is therefore ordered, adjudged and decreed by the court, that the said E. J. Le Blanc, trustee, be and is hereby commanded and directed to pay over and deposit to the credit of said estate of Moore & Bridgman, bankrupts, the value of said rice, and the sums collected from said Earl Keener, amounting in the aggregate to Eleven Thousand nine hundred and six and 45/100 Dollars within ten days from this date.

The court further finds that the rent charged to have been collected from one Watson came into the possession of said Trustee, and the same was embraced in the quantity of rice already
59 accounted for by the said Trustee, and that said trustee should not be held for any further account of the same, and the exceptions of said creditors in which they urge failure to account for said rice paid by the said Watson are overruled.

It is further ordered and adjudged, that the said E. J. Le Blanc, individually, pay all the costs growing out of the exceptions filed in this report, and accounts, and all costs of this proceeding of review.

Action and ruling by the Court to which the said Trustee, E. J. Le Blanc, at the time, duly accepts.

D. E. BRYANT, *Judge.*

In the District Court of the United States for the Eastern District of Texas, at Beaumont.

In Bankruptcy. No. 149.

In the Matter of MOORE & BRIDGMAN, Bankrupts.

On the 9th Day of April, A. D. 1909.

On this day came on to be heard the motion of the Parlin & Orrendorff Company, Parlin & Orrendorff Implement Company and L. W. Leby & Co., filed herein on the 3rd day of April, 1909, for a rule upon E. J. Le Blanc, trustee, to show cause why he should not be punished for contempt for refusing to obey the order and judgment of this court, made on the 17th day of December, 1909, directing him to pay over and deposit to the credit of said estate of Moore & Bridgman, bankrupts, the sum of $11,906.45, together with interest thereon from the date of said judgment, and the answer of the said trustee to said motion and each of the parties appearing by their respective counsel, and said motion having been heard and fully understood is by the court sustained, and the said E. J. Le Blanc, Trustee, is hereby ordered and directed forthwith to pay over said sum of money, together with the interest thereon from the 27th day of December, 1907, at the rate of 6% per annum to H. H. Haley, Deputy Clerk of this court, together with the costs of this motion and all proceedings had thereunder, and upon the payment of said sum and costs the said rule to show cause why he should not be punished for contempt is discharged. Upon the payment of said sum the said H. H. Haley is directed to deposit the same with the Gulf National Bank of Beaumont, there to be held and retained

until the successor of E. J. Le Blanc, trustee, who has re-
60 signed his trust, is elected and qualified, in which event the said clerk is directed to pay said sum to such trustee.

Endorsements: No. 7215. J. M. Hebert et al. vs. E. J. Le Blanc et al. Pleas and answer of the defendants Walter J. Crawford and Gulf National Bank. Filed June 7th, 1909, B. T. Pipkin, Clerk District Court Jefferson County, Texas, by Joe Cottam, Deputy."

Orders Entered in This Case.

No. 7215.

J. E. BROUSSARD et al.
VS.
E. J. LE BLANC, Trustee.

June 7th, 1909. Exceptions and pleas to jurisdiction will be heard on June 28th.
June 28th, 1909. Continued generally.
May 18th, 1909. Plaintiffs demand a jury

The STATE OF TEXAS,
County of Jefferson:

I, B. T. Pipkin, clerk of the District Court of Jefferson County, Texas, hereby certify that the foregoing transcript, consisting of the original petition of plaintiffs, and fiat of the Judge thereon, the plaintiffs' first supplemental petition, the injunction bond executed by plaintiffs and exceptions, pleas to jurisdiction and answer filed by defendants and order continuing cause, constitute all the proceedings had in cause No. 7215, styled J. E. Broussard, et al. vs. E. J. Le Blanc, Trustee, except citations for appearance, of defendants, and writ of injunction and return.

I further certify that said cause is regularly on the jury docket of the 69th Judicial District of Texas, being one of the District Courts of Jefferson County, Texas, and that plaintiffs have deposited in the registry of said court, of which I am Clerk, the sum of $12,-583.08, as tendered in their original petition.

Witness my hand and the seal of said court, at office in Beaumont, Texas, this the 5th day of July, A. D. 1909.

[SEAL.] (Signed) B. T. PIPKIN,
District Clerk Jefferson County, Texas.

61 Endorsements: In equity No. 3. District Court The U. S. for Eastern District of Texas. W. J. Crawford, Plaintiff, vs. J. M. Hebert, et al, Defts. Original Answer of J. E. Broussard and others. Filed July 7th, 1909. A. O. Brackett, Clerk.

District Court of the United States Eastern District of Texas.

No. 3. In Equity.

W. J. CRAWFORD, Plaintiff,
vs.
J. M. HEBERT et al., Defendants.

The Answer of the Defendant E. J. LeBlanc to the Bill of Complaint of W. J. Crawford, Plaintiff.

This defendant saving all exceptions that may be taken to the imperfections of said bill, for answer thereto says:

(1)

To the averments of the first section of said bill this defendant adopts as answers the averments of the answer herein filed by J. E. Broussard & others.

(2)

To the averments of the second section of said bill this defendant says it is true that he qualified as trustee, as alleged, with J. E. Broussard as surety, and that he did not, within one month of his appointment file an inventory, but he avers that the omission was the result of oversight and that such inventory was filed by this defendant as soon as he became aware of the legal requirements therefor; this defendant avers that he, as trustee of the bankrupt estate, employed the bankrupts to finish the growing and harvesting of their crop on the Stengle farm and permitted them to use, (with full compensation to the estate), the stock and implements thereof in harvesting the rice held by J. E. Broussard as trustee for Beaumont Rice Mills, on the McCrimmin farm; this defendant avers that the selection and appointment of him
62 as trustee was at the instance of creditors of the bankrupt estate, at a regular creditors' meeting, and was made with the understanding between this defendant and the creditors there present, the Houston Rice Milling Company and others, that this defendant would keep the bankrupts employed to complete the growing and harvesting of the crop, which was the principal reliance of creditors, and which at the time of this defendant's appointment, was not mature; that as part of the arrangement and agreement this defendant's compensation as trustee was to be limited to a sum which would merely compensate him for such work of supervision as could be done from the office, about $25.00 per month, whereas a reasonable compensation to this defendant or any competent person, for active management of the crop and equipment would have been not less than $300 per month. That the arrangement was maintained with full knowledge of all the creditors, and that part of them, to-wit, Parlin and Orrendorff, who knew well of the said arrangement, and consented thereto, have continually since then

made an instrument of the unusual features of the arrangement to involve this trustee in difficulties, and to cast suspicion upon this defendant's accounts, not frankly admitting as they should have done, that the said arrangement was all the while known to them and consented to by them. This defendant denies the averment that he retained Moore and Bridgman in as full management as if they had been owners, and shows to the Court that they were only employed by this defendant to superintend, perfect and harvest and save said crop, under this defendant as some other person, less familiar with the crop and equipment of the bankrupts, would have had to be employed by this trustee under his arrangement, if he had not employed them.

(3)

For answer to the averments of section three of said bill this defendant adopts the averments of section 3 of the answer of defendants J. E. Broussard et al. herein filed.

(4)

This defendant admits that the persons named as creditors in section 4 of said bill were such, and that their claims were allowed; this defendant avers that when he first obtained
63 knowledge that creditors were asserting for the bankrupt estate a claim to said McCrimmin rice and as soon as he had obtained advice of his counsel, G. P. Dougherty, thereon, he filed his tender of resignation, with his account of assets received and disbursed, to which said creditors excepted as alleged in said bill, and the said creditors resisted his resignation.

(5)

This defendant adopts the averments of the fifth section of the answer of the defendants, Broussard and others.

(6)

This defendant adopts the averments of the 6th section of the answer of defendants Broussard and others.

(7)

This defendant has carefully read the joint answer of defendants Broussard and others herein filed and the facts therein stated are true, to the best information of this defendant, and as he believes, and in so far as it is permissible for him to adopt same as his pleading—not desiring herein any personal advantage to himself from any act of his while trustee—he adopts the averments of said answer as his own. Wherefore, having answered this defendant prays that he may be dismissed hence with his costs, and with all such other relief, general and special, as in equity he may be entitled to.

(Signed) E. J. Le BLANC.

STATE OF TEXAS,
County of Jefferson:

Before me, Will P. Oldham, a Notary Public in and for said County, this day personally appeared E. J. LeBlanc who, having in my presence signed the foregoing, on oath says the facts
64 therein stated are within his knowledge true, except when stated on information and belief, and these he believes true.

Witness my hand and seal of office this 6th day of July, A. D. 1909.

WILL P. OLDHAM, [SEAL.]
Notary Public, Jefferson County, Texas.

Endorsements: No. 3. In Equity. District Court of Eastern District of Texas, U. S. W. J. Crawford vs. J. M. Hebert et al. Original answer of Defendant LeBlanc. Filed July 7th, 1909. A. O. Brackett, Clerk.

In the District Court of the United States for the Eastern District of Texas, at Beaumont.

No. 3. In Equity.

W. J. CRAWFORD, Trustee, Plaintiff,
vs.
J. M. HEBERT et al., Defendants.

JULY 30TH, 1909.

In the above entitled cause on bill filed June 28th, 1909, a temporary writ of injunction having been ordered by the Judge of this Court in aid of its jurisdiction as a bankruptcy court on the 2d. day of June, A. D., 1909, restraining J. M. Hebert, B. C. Hebert, L. Hamshire, M. S. Hamshire, J. A. Bordages, E. J. Le Blanc and J. E. Broussard, their agents, attorneys and representatives from further prosecuting an action instituted by them in the District Court of Jefferson County, 60th Judicial District of Texas, against complainant as Trustee of Moore & Bridgman, bankrupts, to recover a fund of $12,486. held by complainant as such trustee, and at the same time and by the same order, the said defendants were directed to appear and show cause, if any they could, on or before the 7th day of July, 1909, at Sherman, Texas why the injunction thereby granted should not be made perpetual, and
65 J. M. Hebert, B. C. Hebert, L. Hamshire, M. S. Hamshire, J. A. Bordages and J. E. Broussard, the defendants, having filed their demurrers to said bill of complaint, and the court having considered said demurrers, and the remarks of counsel thereon is of the opinion that the said demurrers should be and they are hereby overruled, to which ruling the defendant last named in open court excepts;

Thereupon on said 7th day of July, and after the overruling of demurrers to said bill, the defendants filed their answers, and the

cause being submitted upon bill and answer, and the court having considered said bill and answer and the exhibits thereto attached, and being of opinion that the plaintiff is entitled to the relief sought, it is therefore ordered, adjudged and decreed that the temporary injunction herein granted be and the same is hereby made perpetual, and the said defendants, J. M. Hebert, B. C. Hebert, L. Hamshire, M. S. Hamshire, J. A. Bordages, E. J. LeBlanc and J. E. Broussard, their agents and attorneys are hereby perpetually restrained and prohibited from proceeding in such action in the state court against the complainant herein as trustee. It is not intended hereby to prevent the parties to said state court suit other than the complainant herein, from litigating any matter in the said District Court, 60th Judicial District of Texas, in controversy between them. They are enjoined and restrained, however, from proceeding in said cause against the complainant herein as trustee of the estate of Moore & Bridgman, bankrupts, and from any attempt to recover the fund or any part thereof in the possession of the complainant as trustee of said bankrupts, in said state court.

The defendants, J. M. Hebert, B. C. Hebert, L. Hamshire, M. S. Hams-ire, J. A. Bordages and J. E. Broussard in open court except to this decree and give notice of appeal to the Honorable Circuit Court of Appeals of the Fifth Circuit of the United States at New Orleans.

D. E. BRYANT,
Judge Presiding.

Endorsements: No. 3. In Equity. U. S. D. C. for Eastern District of Texas, at Beaumont. Final Decree. W. J. Crawford, Trustee, Complainant, versus J. M. Hebert et al., defts. Filed Aug. 5th, 1909. A. O. Brackett, Clerk by H. H. Haley, Deputy.

66 District Court of the United States for the Eastern District of Texas, at Beaumont.

No. 3. In Equity.

W. J. CRAWFORD, Complainant,
vs.
J. M. HEBERT et al., Defendants.

To the Honorable David E. Bryant, Judge of the above named Court, presiding therein:

The defendants J. M. Hebert, B. C. Hebert, L. Hamshire, M. S. Hamshire, J. A. Bordages and J. E. Broussard, six of the respondents to the bill of complaint herein, conceiving themselves aggrieved by the order and decree made and entered by the above named court in the above entitled cause under date of the 30th day of July, A. D., 1909, wherein and whereby it was and is among other things ordered and decreed that a temporary injunction therein ordered and issued and served upon the said respondents,

be made perpetual, and that they therefore refrain from prosecuting in the District Court of Jefferson County, Texas, as against W. J. Crawford, a suit which was begun by these respondents as plaintiffs against their co-partner E. J. LeBlanc, alone, to enjoin the said E. J. LeBlanc from taking copartnership funds and diverting them to the purpose of paying the debts of a bankrupt estate whereof he was then trustee, and which said suit was by supplemental petition continued against the said W. J. Crawford after he, as successor to the said E. J. LeBlanc in his capacity as trustee in bankruptcy, received from the said E. J. LeBlanc such funds, as more fully set forth in the answer filed by these respondents on the 7th day of July, 1909, to the original bill of complaint herein filed, do hereby appeal to the United States Circuit Court of Appeals at New Orleans from said order and decree, and particularly from that part which directs that these respondents be enjoined from prosecuting in said state court their said suit against said W. J. Crawford, for the reason set forth in the assignment of errors
67 which is filed herewith; and they pray that this, their appeal, may be allowed, and that a transcript of the record, proceedings and papers upon which said error was made, duly authenticated, may be sent to the said Circuit Court of Appeals.

Dated July 30th, 1909.

A. D. LIPSCOMB,
Solicitor for J. M. Hebert, B. C. Hebert, L. Hamshire, M. S. Hamshire, J. A. Bordages, and J. E. Broussard, Respondents.

Order.

The foregoing petition on appeal is granted, and the claim of appeal therein made is allowed. The bond of appellant is fixed at $2,000, same to act as a supersedeas and bond for costs and damages on appeal.

Done in vacation in Chambers at Sherman, Texas, on full notice, this 30th day of July, A. D., 1909.

D. E. BRYANT,
District Judge Presiding in the Above Named District Court of the United States.

Endorsements: In Equity No. 3. District — of the United States, Eastern District of Texas, at Beaumont. W. J. Crawford, Trustee, versus J. M. Hebert, et al. Petition for appeal. Filed August 5th, 1909. A. O. Brackett, Clerk, by H. H. Haley, Deputy.

68 *Bond on Appeal.*

District Court of the United States for the Eastern District of Texas, at Beaumont.

No. 3. In Equity.

W. J. CRAWFORD, Trustee, Complainant,
vs.
J. M. HEBERT et al., Defendants.

Know all men by these presents that we, J. M. Hebert, B. C. Hebert, L. Hamshire, M. S. Hamshire, J. A. Bordages and J. E. Broussard, residing in Jefferson County, in the State of Texas, as principals, and I. R. Bordages and —— ——, also of said County, as sureties, are held and firmly bound unto W. J. Crawford, trustee, the complainant in the above styled cause, and unto E. J. LeBlanc, a co-defendant, not appealing, and to each of them, in the full and just sum of Two Thousand Dollars ($2,000), to be paid to the said W. J. Crawford, trustee, his successors, assigns, administrators or attorneys as well also a like sum to the said E. J. LeBlanc, his attorneys, executors, administrators or assigns, to which payment well and truly to be made, we bind ourselves, our heirs, executors and administrators, jointly and severally firmly by these presents.

Sealed with our seals and dated this year of Our Lord One Thousand Nine Hundred and Nine.

Whereas lately in Chambers in vacation, under the powers conferred by the bankruptcy act, in a suit pending in the District Court for the Eastern District of Texas at Beaumont, between the above named W. J. Crawford, trustee, complainant, and J. M. Hebert, B. C. Hebert, L. Hamshire, M. S. Hamshire, J. A. Bordages, J. E. Broussard and E. J. LeBlanc, defendants, a decree was rendered and entered against the said defendants, and the said J. M. Hebert, B. C. Hebert, L. Hamshire, M. S. Hamshire, J. A. Bordages and J. E. Broussard having obtained from said court an order allowing an appeal to the United States Circuit Court of Appeals to reverse the decree in the aforesaid suit, and a citation is about to
69 be issued to the said W. J. Crawford and E. J. LeBlanc, citing and admonishing them to be and appear at the United States Circuit Court of Appeals for the Fifth Circuit to be holden at New Orleans, La.

Now the condition of the above obligation is such that if the said J. M. Hebert, B. C. Hebert, L. Hamshire, M. S. Hamshire, J. A. Bordages and J. E. Broussard shall prosecute their said appeal to effect and shall answer all damages and costs that may be awarded against them, if they fail to make their defense good, then the

above obligation is to be void; otherwise to remain in full force and virtue.

J. M. HEBERT, [SEAL.]
B. C. HEBERT, [SEAL.]
L. HAMSHIRE, [SEAL.]
J. A. BORDAGES, [SEAL.]
M. S. HAMSHIRE, [SEAL.]
J. E. BROUSSARD, [SEAL.]
By A. D. LIPSCOMB, *Solicitor.*
L. R. BORDAGES. [SEAL.]
W. S. DAVIDSON. [SEAL.]

Sufficiency of sureties on the above bond approved this 30th day of July, A. D., 1909.

D. E. BRYANT, *Judge.*

I, A. O. Brackett, Clerk of the District Court of the United States for the Beaumont Division of the Eastern District of Texas, hereby certify that the sureties on the foregoing bond are well known to me and in my opinion are amply sufficient.

Witness my hand and the seal of said court affixed this 30th day of July, A. D., 1909.

A. O. BRACKETT, *Clerk.*
[SEAL.] By H. H. HALEY, *Deputy.*

Endorsements: No. 3. Bond on appeal. District Court of the United States for the Eastern District of Texas at Beaumont. In Equity. W. J. Crawford, Trustee Complainant, vs. J. M. Hebert et al., Defendants. Filed Aug. 5th, 1909. A. O. Brackett, Clerk. By H. H. Haley, Deputy.

70 District Court of the United States for the Eastern District of Texas, at Beaumont.

No. 3. In Equity.

W. J. CRAWFORD, Trustee, Complainant,
vs.
J. M. HEBERT et al., Defendants.

Come now the respondents, J. M. Hebert, B. C. Hebert, L. Hamshire, M. S. Hamshire, J. A. Bordages and J. E. Broussard, and file the following assignment of errors upon which they will rely on their appeal from the decree made by this Honorable Court on the 30th day of July, A. D. 1909, in the above entitled cause.

(1)

That the United States District Court erred in overruling the demurrer No. one, interposed by these defendants and appellants to the original bill of complaint filed in said cause, same being based on a want of equity in said bill to authorize the relief prayed for.

(2)

That said United States District Court erred in overruling demurrers numbered two (2) and three (3) interposed by these defendants and appellants to a portion of the original bill of complaint same being those portions of said bill which seek to have conclusive effect given as against these defendants to adjudications wherein only LeBlanc as trustee in bankruptcy and creditors of the bankrupt were parties and *and* wherein these defendants were not parties nor represented.

71 (3)

That said United States District Court erred in overruling the demurrer numbered four (4) interposed by these defendants to the verification of the original bill of complaint herein.

(4)

The said United States District Court has erred in rendering judgment perpetuating the injunction herein against these defendants, and in enjoining these defendants from further prosecuting in the District Court of Jefferson County, Texas, their suit against the plaintiff in this cause, for this, that it appears manifest from the pleadings and exhibits thereof that the said State Court suit involves funds belonging to and held by the firm of Beaumont Rice Mills, a partnership whereof these defendants are members, owning all but 2/75 of the shares; and that said funds remained in the treasury of said partnership until after the said state court suit was instituted and until this United States District Court, through its power over E. J. LeBlanc as a Trustee in Bankruptcy and officer of this court, coerced the said LeBlanc, a copartner of these defendants, and owner of the remaining 2/75 of said shares, to wrongfully resort to deposited funds of these defendants' said partnership, and divert said funds into the hands of said W. J. Crawford, as his successor in trust.

(5)

The said United States District Court erred in holding that proceedings in bankruptcy wherein creditors of the bankrupts obtained an adjudication against E. J. LeBlanc, as trustee in bankruptcy, requiring him to charge himself as such with the value of certain rice, were conclusive against the partnership firm of E. J. LeBlanc, he being compelled to remain in and contest said proceedings as trustee over his protest and after tendering and while insisting on his resignation as trustee.

(6)

The said United States District Court erred in holding in effect that the original answer of these defendants does not state facts requiring in equity that the relief prayed by plaintiff should be denied.

72 (7)

The said United States District Court erred in rendering judgment in said cause against defendants in said cause upon the pleadings in

said cause, and these defendants say the said judgment is contrary to the law and to the facts as stated in the pleadings in said cause.

Wherefore the said defendants and appellants pray that the judgment of said United States District Court be reversed and that such directions may be given that full force and efficacy may inure to defendants by reason of the defenses set up in their original answer filed in said cause.

A. D. LIPSCOMB,
Attorney for Defendants and Appellants.

Endorsements: In Equity No. 3. District Court of the United States, Eastern District of Texas, at Beaumont. W. J. Crawford, Trustee, versus J. M. Hebert, et al. Assignment of Errors. Filed August 5th, 1909. A. O. Brackett, Clerk, by H. H. Haley, Deputy.

Clerk's Certificate.

I, A. O. Brackett, Clerk of the District Court of the United States, in the Fifth Circuit and Eastern District of Texas, do hereby certify that the above and foregoing is a full, true and correct transcript of the record, assignment of errors and all proceedings in cause No. 3, in Equity, wherein Walter J. Crawford, Trustee in Bankruptcy, is complainant, and J. M. Hebert, et al., are defendants, as fully as the same remains on file and of record in my office at Beaumont, Texas.

Witness my hand officially and the seal of said court, at Beaumont, Texas, this the 25th day of August, A. D. 1909.

A. O. BRACKETT, *Clerk*,
[SEAL.] By H. H. HALEY, *Deputy*.

73 And thereafter the following further proceedings were had in said Circuit Court of Appeals on the dates respectively shown.

MARCH 15, 1910.

No. 2004.

J. M. HEBERT et al.
vs.
W. J. CRAWFORD, Trustee.

On this day this cause was regularly called, and after argument by A. D. Lipscomb, Esq., for appellants, and U. F. Short, Esq., for appellee, was submitted to the court.

Filed 12 day of April 1910.

CHARLES H. LEDNUM,
Clerk of the United States Circuit Court of Appeals.

In the United States Circuit Court of Appeals, Fifth Circuit.

Number 2004.

J. M. HEBERT et al., Appellants,
vs.
J. W. CRAWFORD, Trustee, Appellee.

Appeal from the District Court of the United States for the Eastern District of Texas.

74 Before Pardee, McCormick and Shelby, Circuit Judges.

By the COURT:

A majority of the judges are of opinion that no reversible error is shown by the record.

The decree of the District Court is, therefore, affirmed.

No. 2004.

J. M. HEBERT et al.
vs.
J. W. CRAWFORD, Trustee.

This cause came on to be heard on the transcript of the record from the District Court of the United States for the Eastern District of Texas, and was argued by counsel.

On Consideration Whereof, It is now here ordered, adjudged and decreed by this court that the decree of the said District Court in this cause be, and the same is hereby, affirmed.

It is further ordered, adjudged and decreed, that the appellants, J. M. Hebert, B. C. Hebert, L. Hamshire, M. S. Hamshire, J. A. Bordages and J. E. Broussard, and the sureties on the appeal bond herein, L. R. Bordages, and W. S. Davidson, be condemned to pay the costs of this cause in this court, for which execution may be issued out of said District Court.

April 12, 1910.

75 In the United States Circuit Court of Appeals, Fifth Circuit.
No. 2004.

J. M. HEBERT et al., Appellants,
vs.
J. W. CRAWFORD, Trustee, Appellee.

Appeal from the District Court of the United States for the Eastern District of Texas at Beaumont.

Petition of Appellants for Re-hearing.

By A. D. Lipscomb, Attorney for Appellants.

U. S. Circuit Court of Appeals. Filed Apr. 26, 1910. Charles H. Lednum, Clerk.

76 In the United States Circuit Court of Appeals, Fifth Circuit.
No. 2004.

J. M. HEBERT et al., Appellants,
vs.
J. W. CRAWFORD, Trustee, Appellee.

Appeal from the District Court of the United States for the Eastern District of Texas at Beaumont.

Petition of Appellants for Re-hearing.

In the above styled cause come the appellants and pray the Court to grant them a rehearing herein and to direct the Trustee to answer in the State Court proceedings herein involved for the following reasons, to-wit:

77 I.

The record shows that the District Court of the United States had never in any way laid hold on the property involved in this suit, or if it ever had done so, had fully released its hold upon same by directing the trustee in bankruptcy, LeBlanc, to bring in a definite sum of money, without reference to the source from which he obtained it, and that in the meantime jurisdiction over the particular fund herein involved had in due course been obtained by the State Court, and that over $12,000.00 of said particular fund was thereafter taken into the hands of the appellee, Crawford, and is now held by him, in known violation of the State Court's order, wherefore it is a violation of comity, and an unwarranted interference with the exercise of the State Court's jurisdiction, for the Courts of the United States to uphold said trustee, Crawford, in his violation of the State Court's order and to enjoin the plaintiffs in the State Court from continuing their said suit against Crawford.

II.

The case being submitted in the trial Court on bill and answer, there is manifest in the record such a want of equity as to forbid the granting of an injunction to the appellee, Crawford, for this:

(*a*) The crop in question could have had no existence but for the advancements made by appellants' firm at the time their firm obtained an assignment of same, and yet the bill for injunction seeks and obtains an unconditional order for the diversion of said crop to the payment of general creditors of the bankrupt without qualification or limitation or offer to reimburse appellants for their said advancements.

(*b*) The said injunction is calculated to give final and conclusive effect as against these appellants to an ex parte order, in pro-
78 ceedings to which they were not parties, and solely on the ground that one of them was a witness in said proceedings,

and the operation of said injunction is in violation of the Fifth Amendment to the Constitution of the United States, guaranteeing due process of law to every citizen.

(c) The tender by appellants of a speedy and orderly trial in the State Court, of right to the said crop, satisfies every reasonable requirement that could be exacted on behalf of the appellee, Crawford, or creditors claiming under him.

Remarks.

We presume it is unnecessary to repeat what is in the briefs already filed. The statements therein contained, with appropriate references to the pages of the record, sustain the above propositions in point of fact, and the authorities cited seem to us to sustain them in point of law. This Court has delivered no opinion except a memorandum to this effect:

"A majority of the judges are of the opinion that no reversible
" error is shown by the record. The decree of the District Court is
" therefore affirmed."

This gives us no idea of the views entertained by the Court. We can only assume that probably some of the judges were influenced, as indicated by remarks from the bench, by our failure to request the District Court to make an order directing the trustee to answer in the State Court proceedings, and we therefore make the request in this petition.

It must be remembered, by way of apology for that omission, that the trustee, Crawford, had already filed an answer in the
79 State Court and entered into agreements with plaintiff therein for trial of the case at the time the injunction herein granted was sued for. (Record, p. 24, original pages 29 and 30). We naturally supposed that was all involved in the bill of appellee, Crawford, for an injunction and our answer to it, which was urged by us with great confidence, in the view that an order dissolving the injunction in this instant cause would necessarily imply a requirement that the trustee, Crawford, should continue his defense in the State Court. Moreover our answer in the instant cause shows that LeBlanc, the preceding trustee, had made application, involving practically the same matter, which had been refused. (Record, p. 23, original p. 29).

And it was deemed timely enough to apply to the United States District Court for relief after obtaining an adjudication in favor of these appellants in the State Court, realizing of course the possibility that the judgment of the State Court might be adverse to these appellants and thus terminate the matter.

Appellants, moreover, were advised that it was wholly improbable that the Courts of the United States would adopt as their own the act of their officer done in violation of the order of a State Court, made in the exercise of its jurisdiction, and that if a due and orderly trial should be had in the State Court, resulting in the determination that the rice crop in question belonged to these appellants, the United States Court would certainly respect the judgment, espe-

cially in view of the fact that the appellee, Crawford, would have had the right to a review of the State Court judgment in the Supreme Court of the United States.

Many reported decisions of the Courts of the United States indicate an impression prevalent at one time that there was something in the nature and character of a bankruptcy administration, which rendered it necessary to have the Courts and officers thereof
80 engaged in such administration free from the restraints of the Fifth Amendment. But the Supreme Court has never shown the slightest reluctance to apply to bankruptcy Courts the same constitutional limitations that are applied to other Courts and officers, and we had supposed the principle to be thoroughly settled and no longer doubted in any quarter, that the officers of a bankruptcy Court have no right, arising out of the nature of their offices, to take the property of strangers to the proceeding without due process of law. The very language of the constitutional limitation manifests a recognition of the fact that one's property or money may, in a proper proceeding, where all the forms of law are observed, be taken from him and devoted to the satisfaction of claims for which he is in no way bound except by the operation of those proceedings. This would seem to make it clear that such results are forbidden unless the forms of law are complied with, at least to the extent of giving the one injured by such proceedings an opportunity to be heard therein as a party. It may be thought that when the Court is satisfied the claim of one sought to be affected by such proceeding has no merit, no substantial harm results from denying him due process of law. But it remains that there is no recognized constitutional method of ascertaining whether his claim has merit or not except in a due and orderly trial in which he is a party. The experience of every judge ought to have impressed upon his mind the truth that exparte proceedings may result in convictions that are positively shamed by the results of an orderly hearing upon the same matter. Every great man, placed in the position of judge, must feel humbled by the sense of disproportion between the responsibility upon him and the fallibility of human judgment, and must delight in sharing that responsibility with those agencies of Government which have prescribed the methods through which his Court shall reach its determination, and must take pride in following those
81 methods of procedure in close keeping with the spirit of the provisions therefor.

Of course it is possible that if we knew the considerations which have influenced the decision we might not feel justified in attempting to stir these great deeps in the heart of the Court, but as we see the case we can find in the decision nothing less than a disregard of the principles of the Fifth Amendment.

For, certainly, if a Federal Court officer can take property out of the very grasp of a State Court, and be upheld in his action by the Federal Court on the theory that an exparte proceeding in the Federal Court had determined title to the property adversely to the State Court plaintiff, no hope of relief in the Federal Court can exist for the State Court plaintiff; for the effect of such action is to

override two very sacred principles—the inviolability by one Court of the regular orders of another of co-ordinate jurisdiction, and the right of every citizen to hold what he does hold and claim in good faith until deprived by due process of law. If both principles in combination cannot operate as a restraint upon Federal Courts, then one of them alone cannot be expected to do so.

We cannot believe that anywhere or anyhow, upon due consideration, the Courts of one jurisdiction in this country can be got to countenance the acts of their officers done in known violation of the rights of those of a co-ordinate jurisdiction. For the ultimate source of the powers of each of them is precisely the same.

What greater abuse could be imagined that conflicts in the exercise of jurisdiction over the same property, in which the powers of each Court are exerted for protection of its own officers in infringements upon the powers of the other? Where would such a policy tend? Certainly neither jurisdiction can afford to arrogate any thing to itself, but each must decorously respect the pre-
82 cedence acquired by the other in respect of the particular property. This principle certainly includes refusal on the part of one Court to recognize as representative an act of its officers done in known violation of the orders of the other. Federal Courts are no more bound to adopt as their own a taking by a trustee of property out of the hands of a State Court than they would be bound to adopt as their own a burglary committed by a United States Deputy Marshal. Certainly if they are not bound to do so, every principle of comity would seem to make for their refusing to do so.

Respectfully submitted.

J. M. HEBERT,
B. C. HEBERT,
L. HAMSHIRE,
M. S. HAMSHIRE,
J. A. BORDAGES,
J. E. BROUSSARD,
Appellants,
By A. D. LIPSCOMB,
Attorney.

I, A. D. Lipscomb, Counsel for the petitioners for re-hearing, hereby certify that I have carefully considered the foregoing petition and that in my opinion the same is well founded, and I certify further that same is not interposed for delay.

A. D. LIPSCOMB,
Counsel for Petitioners.

83 MAY 16, 1910.

No. 2004.

J. M. HEBERT et al.
VS.
J. W. CRAWFORD, Trustee.

Ordered that the petition for rehearing filed in this cause be, and the same is hereby, denied.

In the Circuit Court of Appeals of the United States for the Fifth Circuit Court at New Orleans.

No. 2004.

J. M. HEBERT et al., Appellants,
versus
W. J. CRAWFORD, Trustee, et al., Appellees.

To the Honorable Judges of the Circuit Court of Appeals of the United States for the Fifth Circuit:—

The appellants, J. M. Hebert, B. C. Hebert, L. Hamshire, M. S. Hamshire, J. A. Bordages, and J. E. Broussard, conceiving themselves aggrieved by the order and decree made and entered and affirmed in this cause on the 12th day of April, A. D. 1910 and by the order overruling their petition for rehearing made and entered on the 16th day of May, 1910, in the above entitled cause,
84 wherein and whereby this court affirmed the decree of the District Court of the United States for the Eastern District of Texas at Beaumont, ordering and decreeing that the temporary injunction therein issued and served upon these appellants be made perpetual, and that they therefore refrain from prosecuting in the District Court of Jefferson County, Texas, as against W. J. Crawford, Trustee, a suit which was begun by these appellants against their co-partner, E. J. Le Blanc alone to enjoin the said E. J. Le Blanc from taking co-partnership funds and diverting them to the purpose of paying the debts of a bankrupt estate whereof he was then trustee, and which said suit was by supplemental petition continued against the said W. J. Crawford after he, as successor of the said E. J. Le Blanc in his capacity as trustee in bankruptcy, received from the said E. J. Le Blanc such funds, as more fully set forth in the answer filed by these appellants on the 7th day of July, A. D. 1909, appearing in the records in this cause with its exhibits on pages 22 to 75, do hereby appeal to the Supreme Court of the United States at Washington, from said decree and the order of affirmance and order overruling the petition for rehearing, and particularly from that part of said orders and decrees which directs that these appellants be enjoined from prosecuting in said state court their said suit against W. J. Crawford, which said orders appellants believe to be erroneous for the reasons set forth in the assignments of error which are filed herewith; and appellants show that more than ten thousand dollars in involved in this proceeding, and that the jurisdiction of the courts of the United States depends upon the supposition that the plaintiff in the trial court, appellee Crawford, is a trustee in bankruptcy suing to enjoin interference by the state court with funds held by him as trustee, and that
85 therefore the case is not one over which the jurisdiction of the Circuit Court of Appeals is made final, and they pray that this their appeal may be allowed, and that a transcript of the

records, proceedings and papers upon which said assignments of error are based, duly authenticated, may be sent to the said Supreme Court of the United States.

Dated May 20, A. D. 1910.

A. D. LIPSCOMB,
Solicitor for Appellants.

Order.

The appeal prayed for is allowed. The bond of appellant is fixed at $2000.00, same to act as a supersedeas and bond for costs and damages on appeal.

Done in Chambers this 26th day of May, A. D. 1910.

DON A. PARDEE,
Circuit Judge.

The foregoing has the following indorsements to-wit: No. 2004. Circuit Court of Appeals of the United States, 5th Circuit. J. M. Hebert, et al., Appellants, vs. W. J. Crawford, Trustee, et al., Appellees. Petition for Appeal. Filed 24 day of May 1910. Charles H. Lednum, Clerk of the United States Circuit Court of Appeals.

86 In the Circuit Court of Appeals of the United States for the Fifth Circuit at New Orleans.

No. 2004.

J. M. HEBERT et al., Appellants,
versus
W. J. CRAWFORD, Trustee, et al., Appellees.

Come now the appellants, J. M. Hebert, B. C. Hebert, L. Hamshire, M. S. Hamshire, J. A. Bordages and J. E. Broussard and file the following assignment of errors upon which they will rely on their appeal from the judgment of affirmance made by this Honorable Court on the 12th day of April, 1910, and order of May 16, 1910 denying these appellants' petition for rehearing in the above entitled cause, to-wit:

I.

This court erred in affirming the decree of the trial court for this: The said decree of the trial court perpetuated an injunction against these appellants' prosecuting by supplemental petition in the state court their suit against appellee Crawford, a trustee in bankruptcy, who is shown to have with full notice and knowledge received and retained more than twelve thousand dollars of the funds involved in said state court suit from his predecessor in trust,
87 E. J. Le Blanc, who had taken said funds in violation of the state court's orders; although the record shows that the bankruptcy court had never in any way laid hold on the

property in controversy prior to the violation of the said state court injunction, and although it is clear that the state court had full jurisdiction and power, and freedom in due comity, to grant the injunction thus violated.

II.

This court erred in affirming the decree of the trial court for this:—

The said decree of the trial court perpetuated an injunction against these appellants' prosecuting by supplemental petition in the state court their suit against appellee Crawford, trustee in bankruptcy, which had already been begun (before his appointment as trustee) against his predecessor E. J. Le Blanc; although it was shown by the record that appellee Crawford had taken the funds involved in said state court in known violation of its injunction against his said predecessor, and although it was manifest that long prior to the institution of said state court suit the bankruptcy court, if it ever had laid hold upon or extended its jurisdiction to the fund in controversy, had released same by limiting the exercise of its jurisdiction to the person of the said E. J. Le Blanc and his bondsmen.

(3.)

The case was submitted in the trial court on bill and answer which made it manifestly inequitable for the following reasons to perpetuate the injunction granted by the decree of the trial court which was affirmed by this court, viz:

(*a*) The crop in question originally in the bankruptcy proceedings, and whose value had been taken from the funds of these appellants' firm by the said Crawford, on the claim of same having been a part of the bankrupts' estate, could have had no existence but for advancements made by appellants' firm at the time
88 their firm obtained an assignment of same, and yet the bill for injunction in this instant case seeks, and the decree herein entered in effect makes, an unconditioned order for the diversion of said funds to the payment of general creditors without qualification or offer or direction to reimburse appellants' said firm for its said advancements.

(*b*) The said injunction is calculated to give final and conclusive effect as against these appellants to an ex-parte order, in proceedings to which they were not parties, and solely on the ground that one of them was a witness in said proceedings, and the operation of said injunction is in violation of the Fifth Amendment to the Constitution of the United States, guaranteeing due process of law to every citizen.

(*c*) The tender by appellants of a speedy and orderly trial in the state court, of right to the said crop, satisfies every reasonable requirement that could be exacted on behalf of the appellee, Crawford, or creditors claiming under him.

Wherefore, the said appellants pray that the said judgment and order of said Circuit Court of Appeals of the United States be re-

versed, as well also the judgment of the District Court of the United States, and that such directions may be given that full force and efficacy may inure to appellants by reason of the defense set up in their original answer filed in the trial court in this cause.

A. D. LIPSCOMB,
Counsel for Appellants.

The foregoing has the following indorsements to-wit: No. 2004. Circuit Court of Appeals of the United States, 5th Circuit. J. M. Hebert, et al., Appellants, vs. W. J. Crawford, Trustee, et al., Appellees. Assignments of Error. Filed 24 day of May 1910. Charles H. Lednum, Clerk of the United States Circuit Court of Appeals.

89 *Bond on Appeal.*

In the Circuit Court of Appeals of the United States for the Fifth Circuit, at New Orleans.

No. 2004.

J. M. HEBERT et al., Appellants,
versus
W. J. CRAWFORD, Trustee, et al., Appellees.

Know All Men by These Presents: That we, J. M. Hebert, B. C. Hebert, L. Hamshire, M. S. Hamshire, J. A. Bordages and J. E. Broussard, residing in Jefferson County, in the State of Texas, as principals, and W. S. Davidson and John L. Keith, also of said county, as sureties, are held and firmly bound unto W. J. Crawford, Trustee and E. J. Le Blanc, appellees in this cause, and to each of them, in the full and just sum of Two Thousand Dollars ($2000.00), to be paid to the said W. J. Crawford, Trustee, his successors, assigns, administrators or attorneys, as well also a like sum to the said E. J. Le Blanc, his attorneys, executors, administrators or assigns, to which payment well and truly to be made, we bind ourselves, our heris executors and administrators jointly and severally by these presents;

Sealed with our seals and dated this year of Our Lord One Thousand Nine Hundred and Ten;

Whereas, lately under powers conferred by the bankruptcy act, in a suit pending in the District Court for the Eastern District of Texas at Beaumont between the above named W. J. Crawford, complainant, and J. M. Hebert, B. C. Hebert, L. Hamshire, M. S. Hampshire, J. A. Bordages, J. E. Broussard and E. J. Le Blanc, defendants a decree was rendered and entered against the said defendants, and the said J. M. Hebert, B. C. Hebert, L. Ham-

90 shire, M. S. Hamshire, J. A. Bordages and J. E. Broussard having obtained from said court an order allowing an appeal to the United States Circuit Court of Appeals for the Fifth Circuit at New Orleans, and on April 12, 1910, the said Circuit Court of

Appeals of the United States entered an order affirming the aforesaid decree, and thereafter on May 16, 1910, another and further order overruling the appellants' petition for rehearing, and,

Whereas, the said appellants have obtained from said Circuit Court of Appeals an order allowing an appeal to the United States Supreme Court to reverse the decree and order affirming same, and citation is about to be issued to the said W. J. Crawford and E. J. Le Blanc, citing and admonishing them to be and appear at the Supreme Court of the United States to be holden at Washington in the District of Columbia;

Now the condition of the above obligation is such that if the said appellants shall prosecute their said appeal to effect and shall answer all damages and costs that may be awarded against them on their failing to make their defense good, then the above obligation is to be void, otherwise to remain in full force and virtue.

J. M. HEBERT, [SEAL.]
B. C. HEBERT, [SEAL.]
L. HAMSHIRE, [SEAL.]
J. A. BORDAGES, [SEAL.]
M. S. HAMSHIRE, [SEAL.]
J. E. BROUSSARD, [SEAL.]
By A. D. LIPSCOMB, *Solicitor.*
W. S. DAVIDSON. [SEAL.]
JOHN L. KEITH. [SEAL.]

Sufficiency of sureties on the above bond approved this 26th day of May, A. D. 1910.

DON A. PARDEE,
Circuit Judge.

91 I, A. O. Brackett, Clerk of the District Court of the United States for the Beaumont Division of the Eastern District of Texas, hereby certify that the sureties on the foregoing bond are well known to me, and in my opinion are amply sufficient.

Witness my hand and the seal of said court affixed this the 20th day of May, A. D. 1910.

[SEAL.]

A. O. BRACKETT, *Clerk,*
By H. H. HALEY, *Deputy.*

The foregoing has the following indorsements to-wit: No. 2004. Circuit Court of Appeals of the United States, 5th Circuit. J. M. Hebert, et al., Appellants, vs. W. J. Crawford, Trustee, et al., Appellees. Bond on Appeal. Filed 2 day of June 1910. Charles H. Lednum, Clerk of the United States Circuit Court of Appeals.

92 No. 2004.

UNITED STATES OF AMERICA, *ss:*

The President of the United States to W. J. Crawford, Trustee, and to E. J. Le Blanc, Greeting:

You are hereby cited and admonished to be and appear before the Supreme Court of the United States at Washington to be holden at the city of Washington in the District of Columbia on the 25th day of June, A. D., 1910, pursuant to an order allowing an appeal entered in the Clerk's office of the Circuit Court of Appeals of the United States in that certain action Numbered 2004 of the docket in which J. M. Hebert, B. C. Hebert, M. S. Hamshire, L. Hamshire, J. A. Bordages and J. E. Broussard are appellants and you are appellees, to show cause, if any there be, why the decree rendered against said appellants and the order of said Circuit Court of Appeals affirming the same should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Melville W. Fuller, Chief-Justice of the United States, this 26th day of May, A. D., 1910.

DON A. PARDEE,
Circuit Judge.

Service of this citation and receipt of copy thereof admitted this 3rd day of June, A. D., 1910.

W. J. CRAWFORD, *Trustee.*
E. J. LE BLANC.

93 [Endorsed:] Citation. No. 2004. J. M. Hebert et al. Appellants vs. W. J. Crawford, et al., Aeppllees. Filed 4 day of June 1910. Charles H. Lednum, Clerk of the United States Circuit Court of Appeals.

94 United States Circuit Court of Appeals for the Fifth Circuit.

I, Charles H. Lednum, Clerk of the United States Circuit Court of Appeals for the Fifth Circuit, do hereby certify that the foregoing contains a true copy of the record, of the assignment of errors, and of all proceedings in the case of J. M. Hebert, et al., Appellants, versus W. J. Crawford, Trustee, et al., Appellees, No. 2004, as the same remains upon the files and records of said United States Circuit Court of Appeals.

In Testimony Whereof, I hereunto subscribe my name and affix the seal of said United States Circuit Court of Appeals, at the City of New Orleans, Louisiana, this 9th day June A. D. 1910.

[SEAL.] CHARLES H. LEDNUM,
Clerk of the United States Circuit Court of Appeals for the Fifth Circuit.

Endorsed on cover: File No. 22,232. U. S. Circuit Court Appeals, 5th Circuit. Term No. 83. J. M. Hebert, B. C. Hebert, M. S. Hamshire, L. Hamshire, J. A. Bordages and J. E. Broussard, appellants, vs. W. J. Crawford, trustee, and E. J. Le Blanc. Filed June 21st, 1910. File No. 22,232.

No. 611

OCTOBER TERM, A. D. 1910

IN THE

SUPREME COURT
OF THE UNITED STATES

J. M. HEBERT, ET AL.,
APPELLANTS

vs.

WALTER J. CRAWFORD, ET AL.,
APPELLEES

Appeal from the Circuit Court of Appeals of Fifth Circuit on an Appeal from the District Court of the United States for the Eastern District of Texas at Beaumont

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MOTION OF APPELLANTS TO ADVANCE

Now come the appellants and move the court to advance this cause on the docket for hearing on printed briefs at an early day for the reasons herein set out, and as follows, to-wit:

(1) This appeal involves only a question of jurisdiction—whether or not the court of bankruptcy could properly enjoin the prosecution of the State Court suit.

(2) There are special and particular circumstances of the case which require that it be advanced on the docket, and which are herein set out by reference to the record as sent up from the Circuit Court of Appeals.

The decree complained of is an order of the District Court of the United States perpetually enjoining these appellants from prosecuting a suit in the District Court of Jefferson County, Texas, against Walter J. Crawford, as trustee of the estate of Moore & Bridgman, bankrupts. Record p. 65.

The case was submitted in the trial court on bill and answer (Record p. 65), and we, therefore, assume that it is proper, as it is certainly most convenient, to let the case be stated from the answer. This answer to the bill for injunction appears at pages 17 to 28 of the Record. Exhibits attached thereto cover pages 29 to 61.

The said bill and answer show that E. J. LeBlanc was trustee in bankruptcy of the Moore & Bridgman estate, and that he was also a member of the firm of Beaumont Rice Mills, a copartnership composed of these appellants and himself. (Record, pp. 3-4 and 22-24.)

That he had never claimed for said bankrupts, nor had there been listed as any part of the bankrupts' assets a crop of rice known as the McCrimmin crop, but the said firm of Beaumont Rice Mills claimed and appropriated said crop. (Record, pp. 25-6 and p. 6.)

That nevertheless creditors of said bankrupts obtained an exparte order of the Court of Bankruptcy charging said E. J. LeBlanc with the obligation to bring into court a sum amounting to about $11,000, ascertained to be the value of said McCrimmin crop, which he had permitted his firm to appropriate, that neither the appellants nor their firm were ever parties to the proceeding in which LeBlanc was so charged. (Record, pp. 25-6 and p. 6.)

That afterward LeBlanc threatened and intended to take said sum out of the firm assets of appellants' said firm, and to prevent him from doing so they brought the suit against him in the District Court of Jefferson County and obtained an injunction restraining him from so doing. (Record, pp. 27 to 30 and pp. 8 to 9.)

That said E. J. LeBlanc violated said injunction, obtaining said sum of money from the assets of appellants' firm and delivered same to appellee, Walter J. Crawford and others, who received same with full notice of said money having been obtained by LeBlanc in violation of the state court injunction, the said Crawford being now substituted as trustee in bankruptcy for the said E. J. LeBlanc. (Record, pp. 27 to 30.)

That because of the circumstances under which said funds came into the hands of Appellee Crawford he was made a party to the state court suit, where he filed demurrers, pleas and answer before applying for the injunction which is here complained of. (Record, pp. 27 to 30 and 8 to 9.)

That since the District Court of Jefferson County had extended its protection over the partnership fund it was clearly forbidden to the District Court of the United States to sanction its officer's laying hold on any part of that partnership fund.

The foregoing statement is relied upon as showing that only a question of jurisdiction is here involved. As special and particular circumstances why the cause should be advanced, appellants show the following, viz:

Both the suit of the appellants in the District Court of Jefferson County and the administration of the bankruptcy estate of Moore & Bridgman are wholly suspended during this appeal.

This appeal involves merely the determining which court can properly give these appellants their remedy—

whether the state court or the court of bankruptcy—and they can not proceed in either until the determination of this appeal.

Pending this appeal these appellants have actually on deposit in the registry of the District Court of Jefferson County, in accordance with a tender in their petition for injunction, a sum exceeding $12,000, intended to answer for the said McCrimmin crop in case they fail to make good their claim of title thereto; and at the same time the appellee Crawford has, as trustee aforesaid, an equal sum or more of these appellants' money, of which they are deprived of the use pending this appeal, the reasonable value of the use at the place of their domicile being 8 per cent per annum.

And appellants are informed that pending this appeal the appellee Crawford, as trustee in bankruptcy, holds said sum idly on deposit, not venturing to distribute same among creditors of the bankrupts.

Wherefore these appellants pray for advancement as above suggested.

GEORGE C. GREER,
A. D. LIPSCOMB,

Solicitors for Appellants.

Of Counsel for Appellants.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1910.

No. [redacted] 83.

J. M. HEBERT ET AL., APPELLANTS,

versus

WALTER J. CRAWFORD ET AL., APPELLEES.

ARGUMENT AND AUTHORITIES IN SUPPORT OF MOTION TO ADVANCE.

A. D. LIPSCOMB,
Solicitor for Appellants.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1910.

No. 611.

J. M. HEBERT ET AL., APPELLANTS,

versus

WALTER J. CRAWFORD ET AL., APPELLEES.

ARGUMENT AND AUTHORITIES IN SUPPORT OF MOTION TO ADVANCE.

We, of course, fully realize that it is no small thing to ask this court to advance a cause, but we are convinced that unless we move to expedite the proceedings that are before us, delay will be as disastrous to our client as a total denial of their rights. The appeal involves a conflict in the exercise of jurisdiction between two courts—the State court and United States court. Either will in one form or another give appellants a hearing on their claim to the $12,000 fund involved, after the question of jurisdiction shall be settled, but

neither will move until then. In the meantime, appellants have in each of the conflicting courts a deposit of a sum equal to the amount involved, above stated. The rate of interest which appellants pay on the total sum withheld from them, if they have borrowed it, as most such concerns do, amounts to about 16 per cent on the amount involved. It need therefore only pend in this court for a few years to put appellants to as much expense in the payment of interest as the sum involved, not to speak of the time that must be consumed in trial, appeal, etc., after the conflict of jurisdiction shall be settled.

Therefore we hope the court will give the record careful consideration, supplying in that way our want of skill in presenting such matters, and will not dispose of the motion until it has become acquainted with the record fully, unless sooner convinced of the necessity for granting the motion; for we know (however poorly we demonstrate it) that the cause ought to be advanced, and that its advancement will be *an expression of order*. In other words, it is characterized as above stated with the "special and particular circumstances" mentioned in section 7 of rule 26.

If the circumstances of a case are such as to render delay more injurious to the parties than is delay in ordinary cases, then it would seem the best of order and system to advance that case before

others in which such special and peculiar circumstances do not exist.

Such is this case. For appellants had actually tendered the sum of money into the State District Court, and their partner, believing himself coerced by the order of the U. S. District Court, took a similar sum from their funds and deposited it with the clerk of the latter court, who transferred it to appellee Crawford, who now holds it in conscious violation of the State court injunction. There is, therefore, plainly the loss of the use of the fund doubly suffered by appellants, pending the appeal, which we understand is not likely to be reached in its numerical order for more than a year.

It is a case where the appellees ought certainly to be joining appellants in the motion to advance; for creditors of the bankrupts are, pending the appeal, deprived of the use of the funds, their adverse claim to which has made the whole controversy; and in no event could they be compensated by interest, since the fund is already lying idly in the hands of the trustee, Crawford. We can safely defy them to say anything against advancement from their standpoint.

Indeed, it is clearly the policy of the law to speed the administration of bankrupt estates. The bankruptcy act expresses this policy in providing for trial courts to take all sorts of judicial action in reference to such administration, "*either in term time or in vacation.*" Sec. 2 of the act of Congress.

It would, therefore, seem to be the duty of the trustee to speed causes and of the courts to require him to do so.

Rule 32 of this court provides:

> "Cases brought to this court by writ of error or appeal under the act of February 25, 1889, chapter 236, or under section 5 of the act of March 3, 1891, chapter 517, where the only question in issue is the question of the jurisdiction of the court below, will be advanced on motion, and heard under the rules prescribed by rule 6 in regard to motions to dismiss writs of error and appeals."

The rule 6 referred to contains no provision pertinent to this motion unless it be one providing that the submission shall be on printed briefs and argument, rather than oral argument.

The two acts of Congress referred to in rule 32 are an act authorizing a direct appeal from the Circuit Court on strict questions of jurisdiction in any case (4 Ann. Statutes, 492), and the act providing what other cases can be taken directly to the Supreme Court from the Circuit Court or District Court. It is, of course, manifest that our case does not come within the letter of rule 32, *but it is clearly within the spirit of it*. Burlington Ry. *vs.* Dunn, 121 U. S., 182.

Of course, we understand that in cases involving many times as much in value as this one, and even where there was some public question involved, *but*

no peculiar circumstances rendering delay particularly injurious, and the questions were other than mere questions of jurisdiction, this court has refused to advance them. Sage *vs.* Ry., 93 U. S. (3 Otto), 412; 23 L. Ed., 933; Ward *vs.* Maryland, 79 U. S. (12 Wall.), 163; 20 L. Ed., 260; Louisiana *vs.* New Orleans, 103 U. S. (13 Otto), 521; 26 L. Ed., 306; Poindexter *vs.* Greenhow, 109 U. S., 63; 27 L. Ed., 861. But it is believed there is no case where this court has denied a motion to advance when only a question of jurisdiction was involved or where the circumstances made delay peculiarly injurious.

If the mere jurisdictional inquiries are entitled to advancement, it would seem to be especially appropriate to advance those involving a conflict of jurisdiction over funds that are to be considered in the actual grasp of one or the other of the two conflicting courts, so as to end as speedily as possible such unfortunate situations.

To summarize our contentions, we believe the case ought to be advanced because:

(1) Only a question of jurisdiction is involved, and it is the policy of the court, as expressed in rule 32, to advance causes where only that preliminary question is involved.

(2) The private rights involved are within the exception stated in section 7 of rule 26, for the

interest paid by appellants on borrowed money necessary to maintain the *two* deposits will in about six years amount to as much as the fund in controversy.

(3) The State court of general jurisdiction is denied the right in the meantime to proceed in the ordinary administration of justice as between citizens.

(4) The bankruptcy court is in the meantime completely balked in the administration of the estate of the bankrupts, Moore and Bridgman, if the fund in controversy is to be regarded as a part of that estate.

For the first three of these reasons we respectfully insist the court should grant the motion in our favor, and because of the fourth we say the appellees are certainly estopped to oppose it.

Respectfully,

A. D. LIPSCOMB,
Solicitor for Appellants.

SUBJECT INDEX.

LIST OF CASES REFERRED TO.

(22,232)

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1912.

No. 83

J. M. HEBERT, B. C. HEBERT, M. S. HAMSHIRE, L. HAMSHIRE, J. A. BORDAGES, AND J. E. BROUSSARD, APPELLANTS,

vs.

W. J. CRAWFORD, TRUSTEE, AND E. J. LeBLANC.

APPEAL FROM THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIFTH CIRCUIT

ABSTRACT OF THE CASE AND QUESTIONS INVOLVED

This is a suit brought by Appellee Crawford, as successor as trustee in bankruptcy to Appellee E. J. LeBlanc, of the Estate of E. F. Moore and F. W. Bridgman, bankrupt rice farmers, against the above named Appellants and LeBlanc in the District Court of the United States for the Eastern District of Texas, to enjoin the prosecution by these Appellants of a suit for injunction in the State Court, begun against LeBlanc as defendant and sought to be continued by supplemental pleadings as against Crawford as his successor. *The case now before your Honorable Court was submitted on bill and answer* and a decree entered perpetually enjoining these appellants, from which they appealed to the Circuit Court of Appeals and on affirmance without opinion the appeal was duly allowed (Tr. p. 62), and prosecuted here. *The admitted allegations of the Bill of Complainant and the material portions of the Answer of these Appellants* show the following to be the material facts, viz:

In this case Appellee E. J. LeBlanc, a member of a firm of co-partners, having only a clerical position in its service,

(Tr. p. 14), accepted the position of trustee in bankruptcy of the estates of E. F. Moore and F. W. Bridgman, taking possession of an irrigated and growing crop of rice herein called the Stengle crop and the live stock and implements belonging to the bankrupts, (Tr. p. 15), without knowledge of any conflicting claims of right that could have been asserted on behalf of said bankrupt estate as against his, the trustee's firm, *to another irrigated crop of rice, herein designated as the McCrimmin crop,* (Tr. p. 27). When he learned of such conflict he returned an inventory showing what had come into his hand as trustee and excluding the subject of the conflict of claim *and sought to be permitted to resign as trustee,* (Tr. p. 28); creditors who asserted the claim for the estate, adverse to his firm, insisted that his resignation should not be accepted (Tr. p. 48) until it should be determined whether he was properly chargeable with the property in question, and the court of bankruptcy withheld ruling on the question of his discharge and heard evidence of right to the property in question on exceptions to his inventory and determined that he as trustee should have charged himself with the property, and that since he had suffered it to be appropriated by his firm (Tr. p. 7, S. 15), he should be charged with the *value* of it, which was ascertained in the proceeding to be $11,651.25. (Tr. p. 17). Appeal by LeBlanc from this order resulted in its affirmance in the Circuit Court of Appeals. (Tr. p. 17). His firm, whereof the other members are the appellants, claimed the McCrimmin crop, on which they have incurred over five thousand dollars of expense in making and saving it, and released a lien on $3000 worth of the live stock and implements of the estate in consideration of the contract for the crop. (Tr. p. 27.) Nevertheless, in the said ex parte proceedings, where the trustee was forced to occupy the position in conflict with his interest, he was directed to pay the full value of the crop into the bankruptcy court, (Tr. p. 17); he had no means of obtaining so great a sum for such purpose except to take it from the funds of his co-partnership and this he proposed to do, (Tr. p. 18). His co-partners thereupon obtained an injunction from the proper state court to prevent his taking their partnership funds for such purpose, but tendered the sum into court and invited prompt trial. This he made known to the bankruptcy court by petition, seeking to be relieved of the summary order till the question of right could be determined in the plenary trial. The order of the bankruptcy court, made in response to that petition, was that he must forthwith bring in the fund or be committed, (Tr. p. 18). Under the pressure of

this immediate certainty of commitment for contempt he violated the State Court order and thus obtaining the sum with interest, paid it into the hands of his successor as trustee in the bankruptcy court, (Tr. p. 18). The other members of his firm, knowing that he had gone into their funds for that purpose, but not consenting thereto, gave notice of the fact to his successor, as trustee in bankruptcy, the Appellee Crawford, and to the other agencies through whom the fund was passed from Appellee LeBlanc as trustee in bankruptcy to his Successor Crawford, *all of them receiving the notice before they received the money,* (Tr. pp. 19 and 31). Said successor nevertheless took and retained said sum. A supplemental petition was therefore filed in the State Court, making the said successor and the bank, where said sum was deposited by him, parties defendant, and simply asserting these facts and asking that plaintiff have judgment against them and such additional process against them as to insure their observance of the original injunction, (Tr. pp. 31 and 32). To this and to the Original Petition in the State court said successor and the bank filed demurrers, pleas and answers, and agreements relating to the trial to be had in the State court were made and filed, and the case stood ready for trial in the State Court (Tr. p. 19) when, at suit of said successor trustee, the temporary injunction was granted by the Bankruptcy Court to restrain these appellants from prosecuting their suit in the State Court, and the same order required these appellants to appear on a day certain and show cause why the injunction should not be made perpetual. (Tr. p. 9.) On the day named these appellants appeared with their answer, the cause was submitted by the complainant on bill and answer, (Tr. p. 50), the *admitted allegations of the bill and material allegations of the answer* showing the facts to be as here stated, and nevertheless the injunction against these appellants was perpetuated, restraining them from prosecuting their suit against Appellee Crawford in respect of the said fund so received by him (Tr. p. 50). Appeal was therefore prosecuted to the Circuit Court of Appeals at New Orleans, where the decree of the Bankruptcy Court was affirmed without written opinion, (Tr. p. 56), and from the judgment of affirmance this appeal has been duly allowed and prosecuted, (Tr. p. 62).

The questions involved are those raised by exception (Tr. p. 50) to the final decree and are as follows:

1. Appellants contend that since the State District Court had properly taken the specific fund (bank deposits of the appellants' co-partnership) under its protection by injunc-

tion, there should have been no interference with its control over same.

2. It was against equity and good conscience to grant the injunction which appellants complain of; for appellants manifestly have superior equities; and the trial which they tender in the State Court would satisfy every reasonable requirement of justice that could be made by Appellee Crawford and the creditors claiming under him.

SPECIFICATION OF ERROR RELIED UPON

The following assignment of error, filed in the Circuit Court of Appeals, is copied from page 62 of the Transcript:

The Circuit Court of Appeals erred in affirming the decree of the trial court, for this:

The said decree of the trial court perpetuated an injunction against these appellants' prosecuting by supplemental petition in the State Court their suit against Appellee Crawford, a trustee in bankruptcy, who is shown to have, with full notice and knowledge, received and retained more than twelve thousand dollars of the funds involved in said State Court suit from his predecessor in trust, E. J. LeBlanc, who had taken said funds in violation of the State Court's order; although the record shows that the bankruptcy court had never in any way laid hold on the property in controversy prior to the violation of the said State Court injunction, and although it is clear that the State Court had full jurisdiction and power, and freedom in due comity, to grant the injunction thus violated.

INTRODUCTION

If it can be demonstrated that the State Court *properly* ordered LeBlanc to refrain from taking partnership funds, for the purpose contemplated by him, then it would seem that the other questions involved in the argument present little difficulty in view of the certainty which this court has given to the rule that *there should be no interference by one court with the control assumed over a specific object by another court of competent jurisdiction, either exclusive or concurrent.* Whether or not the State Court *properly* made the order may depend upon one of two questions: (1) Had the partnership funds of the appellants ever become so affected with the orders made in the *ex parte* bankruptcy proceedings against LeBlanc, relating to the McCrimmin crop, as to render it improper, during the continuance of that condition, for the State Court to assume control of the partnership fund; (2) if so, had

there not been such release by the bankruptcy court of its grasp upon the crop and the proceeds of its sale, and such election to rely upon powers over the person of LeBlanc, (to make him bring in the sum there ascertained as the *value* of the crop, irrespective of its true value and irrespective of the source from which he obtained it), as to leave the State Court freedom to extend its protection over the specific fund?

There was no replication, nor evidence introduced at the hearing; the Appellee Crawford submitted the case on Bill and Answers. (Tr. pp. 49 and 50.) The necessary rule in such case is that "*the material allegations of the Answer are taken as true in all points, and the allegations of the bill which are not admitted are to be taken as untrue.*"

Bates Fed. Eq. Proc. S. 327.
Reynolds vs. Bank, 112 U. S., 409.
Banks vs. Manchester, 128 U. S., 244.

The State Court pleadings of these Appellants, appearing in the Transcript on pages 23 to 32 as exhibits, are adopted as part of their answer (Tr. p. 18), and are therefore cited as freely as the body of the answer itself.

BRIEF OF THE ARGUMENT

I.—No agent of the bankruptcy court, prior to the action of the State Court, had ever laid hold upon the McCrimmin crop or its proceeds of sale in such way as to forbid the State Court, in due regard for the obligations of comity, to lay hold upon the co-partnership funds including it, for the purpose of determining the questions of title thereto and rights therein.

II.—By ordering LeBlanc to bring in a definite sum of money and interest, irrespective of the source from which he obtained it, the Bankruptcy Court had left the McCrimmin *crop and the proceeds of its sale* subject to be controlled by any court of competent jurisdiction.

III.—It appearing that the State Court had, in the *proper* exercise of its jurisdiction over LeBlanc and over the funds of his co-partnership, extended the protection of its injunction to a specific fund—bank deposits of the partnership—no person or officer, taking those funds or part of them from LeBlanc with notice, could be lawfully shielded by the Bankruptcy Court from the process of the State Court. None but a court of revisory powers should have interferred with the State Court's control of the fund.

IV.—The determinatoin in an ex parte proceeding of the Bankruptcy Court, against the trustee as such, that property has come into his hands as trustee, did not conclude the right of the trustee's co-partners to try title thereto in the State Court, when in fact the property had at all times been in possession and control of a conventional trustee, holding same for the partnership.

V.—No circumstances existed in this case to authorize a summary dispossession of these appellants.

VI.—Equity forbade the granting of an injunction by the Bankruptcy Court under the circumstances.

VII.—The trustee in bankruptcy should, on his request, have been relieved of his position when conflict of claim arose as to the property between creditors claiming that it belonged to the bankrupt estate, and the trustee's firm of co-partners claiming it belonged to them; and since he was first subjected to an *ex parte* order requiring him to account to his successor for the *value* of the property as property of the estate, such order should have yielded readily to his showing that the only funds which he could resort to for obtaining the sum had been placed beyond his control, in a court of competent jurisdiction, where prompt plenary trial of right and title was offered as between his partners and his successor in trust.

VIII.—Since the jurisdiction given to the Bankruptcy Courts by the amendments of 1903, to try suits involving adverse claims of title to property, was made to depend upon the existence of fraud in the adverse claim, it follows that such power exists only in cases of fraud; and that the only proper court in which to try the questions of title and right here involved, (where the record shows that appellants acquired their claim in good faith, under a contract beneficial to the estate), was the State District Court.

IX.—This agreement for producing an unplanted rice crop for Broussard, as Trustee for Appellants' firm, in consideration of advances necessary to make the crop, and contemplating that the said firm should bear the expenses of rent of the land, water necessary for irrigating it, and all the other expenses of harvesting and saving it, is not within the prohibition of the bankruptcy law although part of the consideration was an antecedent debt, only partially secured, and the petition in bankruptcy of the insolvent debtor followed within four months after the written evidence of the agreement was executed.

X.—Since the unplanted crop was essentially and exclusively the product of a parol agreement of Moore with Broussard, as trustee for appellant's firm, made more than four months prior to bankruptcy, the fact that the written evidence of the agreement was not executed more than four months prior to bankruptcy is immaterial on principles of equity and under the Texas law.

ARGUMENT

I.

The Bankruptcy Court had never such control of the McCrimmin crop or the proceeds of its sale as to forbid its being taken, as part of the funds of appellants partnership, under the protection of the State Court.

The full statement as to the possession and control of that crop, herein designated as the "McCrimmin crop," is made in Section 3 of these defendants' answers (Tr. p. 15) as follows:

> "Defendants deny that the crop of rice on the Mc-"Crimmin farm ever came into the possession or con-"trol of said LeBlanc in any capacity, and aver that "same was at all times after the 15th day of June, "1906, in the possession of J. E. Broussard and under "his complete control and management, and that said "J. E. Broussard, as trustee of said crop and as Man-"ager of the Beaumont Rice Mills, caused the said "Moore and Bridgeman to harvest the said crop, and "haul same for him; that in doing so the said Moore "and Bridgeman used part of the teams and imple-"ments of the said bankruptcy estate, and in part used "the implements of the Beaumont Rice Mills, and the "said LeBlanc as trustee, was duly paid by the Beau-"mont Rice Mills the usual and customary rates for "said services, including the labor of Moore and "Bridgeman, and all other service employed therein, "in accordance with an agreement made with said "Moore by J. E. Broussard prior to performance of "the service, and greatly to the advantage of the bank-"rupt estate. That it is true the said LeBlanc took "possession of the rice grown on the *Stengle* farm and "sold same, and accounted for its proceeds, and took "possession of the mules, horses and implements; but "it is not true that E. J. LeBlanc ever sold the crop "on the McCrimmin farm or any part of it, but the "facts are, that Defendant J. E. Broussard received

"said crop, paid therefrom the water rates of two sacks per "acre, and placed the remainder, amounting to about "3583 sacks of the value of $11,651.25, in the ware- "houses of the Beaumont Rice Mills and that in all "respects the averments contained in Section 3 of said "original bill of complaint in this cause are false, ex- "cept to the extent they conform to the allegation in "this clause of defendant's answer."

As stated above, LeBlanc only occupied a clerical place in the affairs of his partnership, the management being given over to Broussard, Tr. p. 14.

The suit of these appellants against LeBlanc did not pertain to any property in the hands of LeBlanc as trustee. It sought to enjoin him personally from taking funds of the partnership. It was therefore unlike the cases of White vs. Schloerb, 178 U. S., 545, and Re Russell, 41 C. C. A., 325, in each of which a replevin suit was brought by adverse claimants to recover specific property in the hands of the trustee, and was held to be properly enjoined. In the Russell case the distinction was pointed out, the Court saying:

"We should entertain no doubt that the Machinists "Supply Company was entitled to bring an action of "trespass or trover for the recovery of the *value* of the "property against the trustee, in the State Court."

On the same principle there would be no conflict here, since the Bankruptcy Court's order directed LeBlanc to account for the definite sum ascertained to be the *value* and not for the crop itself.

As between Courts having concurrent jurisdiction for plenary trial the one whose jurisdiction for such trial has been first called into exercise should be left untrammeled in the exercise of its jurisdiction for adjudication of the ultimate rights, leaving the processes of execution to be looked after in the court having control of the property or fund in litigation.

Orton vs. Smith, 18 How., 263.
Yonley vs. Lavender, 21 Wall, 276.
Byers vs. McAuley, 149 U. S., 620.

It may be conceded that if the Bankruptcy Court had a general jurisdiction and proper machinery for trial of title to property and there had been begun in it, before the State Court suit was filed, proceedings for a *plenary trial, its*

jurisdiction would have been exclusive, *irrespective of whether it had custody of the fund in question or not.*

Rickey, etc., vs. Miller & Lux, 218 U. S., 259.

But there was here no conflict of the kind arising between Courts of concurrent jurisdiction; for whatever proceeding *existed* in reference to this crop in the Bankruptcy Court was of a wholly different kind from that in the State Court. It was a proceeding in *rem* where all persons who participated had common claim and whose interest, at least in the capacity in which they participated, was to have the estate include the property; while the proceeding in the State Court, was for determination of an adversary claim as between the estate and persons not participating in the proceedings in bankruptcy. Where there is such difference there is no conflict unless the first court to act has taken the property into its custody, and then only to the extent that the second Court attempts to interfere with possession.

Watson vs. Jones, 13 Wall, 679; 20 L. Ed., 671.
Re Russell, 41 C. C. A., 325.

Declarations apparently to the contrary occur only in those cases in which the one Court has attempted to interfere with the *custody* of the other.

Murphy vs. John Hofman Co., 211 U. S., 562.
Palmer vs. Texas, *infra.*

If it should, for argument's sake, be conceded that the Bankruptcy Court had custody of the property, yet the State Court, having jurisdiction of a wholly different kind from that in which LeBlanc and the fund were being *summarily* dealt with, could have proceeded to due and orderly adjudication, leaving the Court of administrative powers to respect its orders as its spirit of comity should prompt, as had been done in situations where the reverse conditions prevailed, i. e., where the State Court was the Court of administrative powers having the fund in custody, while the appropriate Court for adjudication had been the Federal Court.

Yonley vs. Lavender, 21 Wall, 272; 22 L. Ed., 536.
Byers vs. McAuley, 149 U. S., 620; 37 L. Ed., 873.

Notwithstanding declarations in the extreme cases involving conflict of *custody,* to the effect that "possession carries with it the *exclusive* jurisdiction to determine all judicial questions concerning the property," (208 U. S., 46; 211 U. S., 569), it is too plain for argument that the jurisdiction of

the Court having possession may be limited, or be devoid of the machinery necessary to afford a constitutional trial, and in such cases it is necessary to preserve the ordinary jurisdiction of the other courts over the property, exclusive for the purpose of determining title, and there is no principle which requires one court's temporary possession of property to exclude another's exercise of power to determine title to it, even where its jurisdiction is only concurrent.

Yonley vs. Lavender, Supra.
Orton vs. Smtih, 18 How., 263.
25 U. S. Stats., 433 S. 3.

But the above citations to the *record* under this heading show as matter of fact that *the Bankruptcy Court never had actual custody of the fund in question or any part of it*, and the Appellants, as adverse claimants, declined to go into the Bankruptcy Court to submit their claim. The principle of Constructive Custody is limited in operation to those who participate in the proceedings and their privies. Such a fiction could never operate so as to require the true owner of property, in peaceable possession and not a party to the litigation, to go into the court claiming constructive custody, as the court of exclusive jurisdiction over it.

In cases like this the jurisdiction of the Bankruptcy Court must depend wholly upon actual or constructive custody of the fund, (Murphy vs. John Hofman Co., 211 U. S., 569), or upon such voluntary subjection of the adverse claim to its jurisdiction as was done in Coder vs. Arts, 213 U. S., 233, or suggested in Bardes vs. Bank, 178 U. S., 524. Both elements were wanting here and for this reason jurisdiction in the Bankruptcy Court over the claim asserted by these appellants was wanting, or, to say the least, not in exercise, when the State Court extended its protection over the partnership funds.

II.

The Bankruptcy Court had not its hand upon any specific fund, but relied solely upon its power over the person of LeBlanc, at the time the State Court extended its protection to the fund in question.

In the Petition of the Appellants in the State Court, (Tr. p. 28), whose allegations were adopted in its answer herein, (Tr. p. 18), it was alleged of the injunction prayed for:

"That an injunction restraining such action *would "not in any way interfere with the process of the*

"United States District Court, since its orders do "not purport to reach the rice or its proceeds in the "hands of the Beaumont Rice Mills, but only charge "the said E. J. LeBlanc to account personally for the "value of the rice as found by said decree."

The order of the State Court, while recognizing its obligation to protect the partnership funds in a plain case, was carefully framed with a view to avoid conflict with the Bankruptcy Court. (Tr. pp. 29 and 30.)

The order in question of the Bankruptcy Court, (pp. 44 and 45 of the Transcript here), shows that LeBlanc was directed to bring into the Bankruptcy Court a certain sum of money, the ascertained value of the rice, and it was not inferable that he could have relieved himself by obtaining and surrendering the rice itself, or its proceeds of sale, or its actual value, if less than the sum named.

This Court has held that *the pendency of proceedings* in a Federal Court wherein it had previously had specific property in its grasp, did not prevent a State Court from taking the same property into its control after the Federal Court had released its grasp; and that a new order of the Federal Court then made, attempting to extend its grasp to the property, would be just as improper as if it had never had the property in custody.

Shields vs. Coleman, 157 U. S., 178.

Note also what was given as the unanimous opinion of this Court in Buck vs. Colbath, 3 Wall, 334; 18 L. Ed., 260, as follows:

"It is only while the property is in possession of "the Court, either actually or constructively, that "the Court is bound or professes to protect that pos- "session from the process of other Courts. When- "ever the * * * possession of the officer or Court "is discharged, other courts are at liberty to deal "with it according to the rights of the parties before "them, whether those rights require them to take pos- "session of the property or not."

Under sound principles of construction and interpretation that meaning should be given to the orders which is consistent with right action on the part of the State Court.

Sec. Trust Co. vs. Black R. N. Bank, 187 U. S., 227.

The subsequent acts of the Bankruptcy Court cannot be properly looked to in determining the proper construction to

be placed on its previous order for the purpose of imputing wrong. The character of the State Court's act must be determined in the light of the facts as they existed at the time of the act and not in the light of subsequent orders of the Bankruptcy Court; and the subsequent orders of the Bankruptcy Court must be construed in the light of what had been previously done by both Courts. It required the subsequent order of the Bankruptcy Court to produce any conflict at all and its last order produced a sharp and irreconcilable conflict, sanctioning a contempt of the State Court which it seemed almost to have forced upon its officer by its order of April 9, 1909. (Tr. p. 18.)

III.

The State Court having rightfully assumed control, none but a court of revisory powers should have caused, or sanctioned, interference with its control.

Whether the State Court is to be regarded as having taken the fund under its protection before the Federal Court ever laid hold upon it or after the Federal Court released its hold, the rule is the same. The Court, whose protection has been *rightfully* extended to property, must be deemed to have exclusive control.

Orton vs. Smith, 18 How., 263.
Farmers L. & T. Co. vs. Lake St. El. R. Co., 177 U. S., 62.
Palmer vs. Texas, 212 U. S., 125.

In the last named case the language of the Court in passing on a conflict of possession and deciding it is as follows:

> "If a Court of *competent* jurisdiction, State or Fed-
> "eral, has taken possession of property, *or by its pro-*
> *"cedure has obtained jurisdiction over same,* such
> "*property* is withdrawn from the jurisdiction of the
> "other authority as effectually as if the property had
> "been removed to the territory of another sovereignty.
> "Wabash R. R. vs. Adelbert College, 208 U. S., 38, and
> "previous cases of this Court cited therein at page
> "54."

If the jurisdiction of the State Court had *rightfully* extended over the partnership funds, it was a personal wrong of LeBlanc to take same in violation of its orders; it was equally a wrong on the part of any person taking them from him with notice. No doubt, when LeBlanc accepted the position of trustee in bankruptcy he subjected his person to the

Bankruptcy Court's control and it could deal with him in the most simple and direct manner and insist on his going to jail or else producing the sum in question, so long as he was not expressly directed to take it in violation of the State Court injunction; but when he produced the sum, manifestly taken in violation of the State Court order, it was the duty of each of the Federal Court officers, as such, to repudiate LeBlanc's act, and treat him as not having complied with the Bankruptcy Court's order. To receive the fund with full knowledge of LeBlanc's violation of the State Court's order was to make themselves parties to it. They could not be assumed to be agencies of the Bankruptcy Court in such action. *Rex non potest peccare.* Their wrong was personal. The right to control the fund remained unimpaired in the State Court, and it cannot be possible that it was necessary for it, or these invoking its power, to first sue for leave in the Bankruptcy Court before proceeding to follow up the fund in the hands to which it had wrongfully passed out of its own hands.

Peck vs. Jenness, 7 How., 625.
Dietzsch vs. Huidekoper, 103 U. S., 494.
Prout vs. Starr, 188 U. S., 544.

The error of the Bankruptcy Court has lain in a clear breach of comity—in its accepting from LeBlanc funds known to have been taken by him in violation of a State Court's order which was not in conflict with any previous order of the Bankruptcy Court. Its procedure, on learning that LeBlanc had only produced the sum by violating the order of the State Court, was clearly this, viz., to treat LeBlanc as not having complied with its order at all and to direct that LeBlanc's successor surrrender the fund on the undisputed evidence of the source from which it was obtained, or else to leave the whole question of *right* to the fund to be tried in the State Court, directing the Appellee to proceed with the defense therein.

Gumbel vs. Pitkin, 124 U. S., 131.
Peck vs. Jenness, *Supra.*

For the Bankruptcy Court, in view of the record as here made, to grant the injunction against following up the fund in the hands of Crawford, was the equivalent in principle of ordering LeBlanc in the first place to go into the partnership funds of these appellants in frank violation of the State Court's order. To urge that, in advance of such sanction, it was necessary to obtain consent of the Bankruptcy Court to

sue Crawford is on a parity with the exploded contention that one must have consent of a State to sue a State officer who under misconstruction of his authority violates a constitutional right in the commission of a trespass.

It could not be assumed in advance that the Bankruptcy Court would adopt the wrongful act of Crawford, and, therefore, it could not be supposed necessary to get its permission before making him a party to the proceedings of the State Court whose orders he had knowingly made himself a party to the violation of.

The supplemental petition which made Crawford a party should be read in connection with appellee's allegations relating to it, and it will be observed that it assumed that his acts were personal and would not be countenanced by the Bankruptcy Court, and that it did not contemplate the probability of the Bankruptcy Court making any orders sanctioning the clearly wrongful taking and retention by Crawford of possession of the fund. (Tr. pp. 31 and 32.)

Ordinarily non-interference is a mere matter of comity; but as between Courts of the United States and State Courts it is something more. "It is a principle of right and law and therefore of necessity."

Metcalf Bros. vs. Barker, 187 U. S., 175.
Exp. Royall, 117 U. S., 254.
S. 720 R. S. of U. S.

IV.

The ex-parte action against LeBlanc could not as against these Appellants even give character to the proceedings, contrary to the truth, so as by estoppel to determine the forum for subsequent proceedings.

As matter of fact, Appellants, through Broussard, had at all times control of the McCrimmin crop. (Tr. p. 21.) It would be absurd to hold that proceedings to which they were not parties could estop them to assert that truth.

Smith vs. Mason 14 Wall, 432-3.

The character of proceeding against LeBlanc, relating to the McCrimmin crop, was selected by creditors of the Bankruptcy, and insisted upon by them. If those proceedings were ill-chosen, very burdensome and wholly inconclusive, they have only themselves to hold responsible for it. For example, how reasonable it would have been to let LeBlanc retire from the position of trustee before forcing him through

the disagreeable but inconclusive proceedings adopted by the creditors to test the right to the McCrimmin crop, and allow a substitute trustee to proceed for it with proper parties. Certainly they were bound to know that the enforced participation by LeBlanc in the proceedings as trustee and the attendance of Appellant Broussard as a witness and the fact of his being a surety on the bond of LeBlanc would not make the proceedings conclusive of the claim of these appellants. The right spirit of regard for opposing parties or for the Court would have guided the creditors aright. But, on the contrary, the spirit in which they have conducted their fight has been that of disregard for all adverse claims, whether of substantive right or rights in respect of procedure. It needs no very extended examination of their part in the record to see that. They want an ex parte proceeding against LeBlanc to be held binding against his firm, on the theory that one of his partners was a witness, (Tr. pp. 7); they insisted on his remaining trustee until the court passed on the question, summarily in *ex parte* proceedings, of his firm's adverse claim to property (Tr. p. 48, S. 4); their very bill in this case expresses the nature of their regard for principles of justice in the passage on p. 7 of the Transcript where, they insist on this injunction against appellants, "whether their claim thereto was just or not;" and in the clause on p 8 where, indulging their humor on a question of tyrrany, they say of LeBlanc that it "was perhaps prudent to comply with the order of the Court directing him to make such payment."

There was a notion current in some quarters (but never sanctioned by this Court, Eyster vs. Goff, 91 U. S., 521), that Bankruptcy Courts are about free from the limitations imposed by the Due Process clause of the Constitution, and the attitude of the creditors seems to have been determined by that notion.

There is, on the contrary, no substantial difference in principle between a bankruptcy proceeding and the administration of a receivership or of a decedents estate; if conflict of claim arises as between the administrator or receiver and the estate, he is usually allowed to retire and contest the claim with his successor. If he has been ordered, in a *summary* way, to produce some fund or property in Court the order yields readily to a showing that the matter of right has become involved in some plenary judicial proceeding in which a court of competent jurisdiction has extended its control over the subject of controversy with a view to a con-

clusive and final determination of the questions of right which, in the proceedings *in rem* could only be passed upon as an administrative measure and inconclusively.

Re Chase, 59 C. C. A., 629.
Hurley vs. A. T. & S. F. R. Co., 213 U. S., 132.
Peck vs. Jenness, 7 How., 625.

V.

No Circumstances existed to Authorize Summary Action against the Appellants.

There are cases in which the right of the Bankruptcy Court to take summary action against persons holding adversely is recognized. (Re Baudoine, 41 C. C. A., 318; White vs. Schloerb, 178 U. S., 542.) That is only where the right of the estate to property is admitted or clear or the power of the Court is not questioned. There should be no circumstances under which a Bankruptcy Court can suspend the operation of the Constitution and deny to persons outside of the bankruptcy proceedings the protection afforded by a fair and orderly trial. (Eyster vs. Goff, 91 U. S., 521.) However that may be, there are no circumstances here warranting summary action against these appellants. There was an undisputed debt of $6177.03 due them from Moore in January, 1906, (Tr. p. 23), for security of which they held a lien on about $3000 worth of live stock and implements, (Tr. p. 27); in addition they agreed, through Broussard, to advance Moore $1000 and secure the rent charges of the land in consideration of Moore's farming and turning over to them the crop on the McCrimmin tract, (Tr. pp. 24 and 25); under the $1000 stipulation they actually advanced $1139.80 (Tr. p. 26); taking a written transfer to Broussard before the crop was planted, (Tr. p. 25); in June, the crop was taken over in satisfaction of all claims against Moore, (Tr. p. 26), thus releasing, to the advantage of general creditors, these appellants' lien on said live stock and implements. (Tr. p. 27.) Moore and Bridgeman, working on their own crop for the trustee, were employed by Broussard to harvest the neighboring McCrimmin crop, they using the teams and implements of the bankrupt with some of Broussard's, and the bankruptcy trustee being paid by Broussard for their services. (Tr. p. 27.) The total expenses of harvesting, threshing, sacking, hauling, freight, etc., of the McCrimmin crop, amounting to more than $4200, were paid by Broussard. (Tr. pp. 27 and 29.) Appellants' petition in the State Court declares that he took first the trust instrument from Moore,

transferring the crop, (Tr. p. 25), and next the absolute parol assignment of the crop, without thought of preference or of defrauding or injuring anyone. (Tr. p. 26.)

VI.

Equity forbade the granting of the injunction here complained of.

The defendants in the instant suit, including these appellants, when they were enjoined from prosecuting their suit in the State Court, were in this attitude, viz: They had caused their partnership funds to be taken under the protection of the State District Court and had tendered into that Court, to be subjected to its immediate order, (waiving the ordinary processes of execution), a part of said funds equal to the amount which LeBlanc was ordered to bring into the Bankruptcy Court, (Tr. p. 28 and certificate p. 46); appellants were, moreover, tendering a prompt trial, (Tr. p. 19), with the idea that a successor for LeBlanc would be appointed to defend it, (Tr. p. 30), and with the idea that their partner would be relieved by the Bankruptcy Court of the consequences of the mere summary order against him, on their showing in a plenary trial that the McCrimmin crop had been rightfully appropriated by their firm; it was claimed by LeBlanc that he had the right to take the partnership funds since his firm had appropriated the McCrimmin crop and since he had no other source, save their partnership funds, of obtaining the sum which he was ordered to bring into the Bankruptcy Court. (Tr. p. 18.) Since the creditors in the Bankruptcy Court, in inconclusive proceedings selected by them, had obtained a ruling from the Bankruptcy Court adverse to these appellants, it was natural that these appellants, disputing the correctness of the result, should select for plenary hearing a Court in which the judge of the Bankruptcy Court would not sit. (Compare S. 21, Act of 1911.) For the Bankruptcy Court to sanction the taking and retention of a second sum from the funds of the partnership, equal to that already tendered by the appellants into the State Court, was not in accord with fundamental maxims of the system of jurisprudence to which the remedy of injunction belongs. And this view is especially strengthened by the consideration that its order was made along in 1909, (Tr. p. 45), about three years after the bankruptcy had been opened, (Tr. p. 27), and that neither these appellants nor their firm had ever made any claim in bankruptcy for allowance for what in the absence of title to the crop would be about $3000 of live stock and implements of the bankrupts admittedly covered by first lien in their favor to secure over $6000 of indebtedness exist-

ing prior to the beginning of the crop of 1906, (Tr. p. 27 and p. 23), and for more than $5000 advanced by Broussard on behalf of the Beaumont Rice Mills, in making and saving the McCrimmin crop, (Tr. pp. 27 and 29).

VII.

Controlling force should be accorded to plenary judicial proceedings over mere summary orders in those that are ministerial.

In this case the trustee in bankruptcy rejected the demand of creditors that he inventory certain property as property of the estate, because he thought it belonged to his firm. (Tr. p. 27.) Recognizing the conflict of duty to his firm with his position as trustee, he at the same time tendered his resignation as trustee. (Tr. p. 28 and p. 48.) On exceptions urged to his inventory he was charged with the obligation to account for the *value* of the crop, as part of the estate. (Tr. pp. 44 and 45.) No one could suppose that in such a proceeding his firm's claims of title to the crop would be concluded any more than it would have been if, instead of being a trustee in bankruptcy, he had been an executor or administrator in the probate court. In such a court, however emphatically the administrator might be charged with the duty of taking possession of or accounting for the value of specific property, he could always discharge himself by showing that in a plenary hearing in a court of competent jurisdiction the claim of the estate had been fairly adjudged against, or he could excuse immediate production of the fund by showing that it had been taken into control by some court of competent jurisdiction for the purpose of a plenary trial of title; and the fact that he himself was a member of the association or firm asserting the adverse claim could not affect the matter further than to suggest that he be relieved of his position as trustee so as to give place to a new one in no way disqualified to represent the estate in the trial. The principle is thus stated by this court in Hurley vs. A. T. & S. F. R. Co., 213 U. S., 132:

> "It is settled that a trustee in bankruptcy has no "equities greater than those of the bankrupt, and that "he will be ordered to do full justice, even in some "cases where the circumstances would give rise to no "legal right, and, perhaps, not even to a right which "could be enforced in a court of equity as against an "ordinary litigant. Williams, Bankr. 7th Ed., 191. In- "deed, bankruptcy proceeds on equitable principles so "broad that it will order a repayment when such

"principles require it, notwithstanding the court or "the trustee may have received the fund without such "compulsion or protest as is ordinarily required for "recovery in the courts either of common law or "chancery."

VIII.

Amendments of 1903 were not intended to give the Courts of Bankruptcy jurisdiction for recovery of property in cases where the adverse claim is of the nature here manifested.

If the provision of the Bankruptcy act could be construed as extending the powers of administration of the court to everything owned by the bankrupt not transferred more than four months prior to bankruptcy, yet the quotation from the record above made in division I of the argument shows that *the Bankrupts really never owned the crop in controversy, but that it actually came into existence burdened with the equities asserted in favor of these appellants.*

The material portions of the amendment of 1903, with the other unchanged portions of Section 60b, read as follows:

> "If the bankrupt shall have given *a preference and* "*the person receiving it* * * * *have reasonable* "*cause to believe it was intended thereby to give a* "*preference,* it shall be voidable *by* the trustee, and he "may recover the property or its value from such per- "son. And for the purpose of such *recovery* any court "of bankruptcy * * * shall have * * * ju- "risdiction."

The general provision embraced in S. 23 is that:

> "Suits by the trustee shall only be brought * * * "in the courts where the bankrupt * * * might "have brought them."

In the case of Harris vs. Bank, 216 U. S., 382, this Court refused to extend the provisions of the amendments of 1903 to a suit for property held over under a contract of bailment, which the bankrupt had had with defendant.

In the case of Bush vs. Elliott, 202 U. S., 479 and 480, it is said by Justice Day, delivering the unanimous opinion:

> "The bankruptcy act of 1898, in respect to the mat- "ters now under consideration, was a radical de- "parture from the act of 1867 (14 Stat. at L. 517, "Chap. 176), in the evident purpose of Congress to

"limit the jurisdiction of the United States Courts "in respect to controversies which did not come "simply within the jurisdiction of the Federal Courts "as bankruptcy courts, and to preserve, to a greater "extent than the former act, the jurisdiction of the "State Courts over actions which were not distinctly "matters and proceedings in bankruptcy."

Quoting from Bardes vs. Bank, 178 U. S., 531, in the same case, he says in discussing S. 23:

"This clause, while relating to the Circuit Courts "only, and not to the District Courts of the United "States, indicates the intention of Congress that the "ascertainment, as between the trustee in bankruptcy "and a stranger to the bankruptcy proceedings, of the "question whether certain property claimed by the "trustee does or does not form part of the estate, to "be administered in bankruptcy, shall not be brought "wtihin the jurisdiction of the National Courts solely "because the rights of the bankrupt and of his credi- "tors have been transferred to the trustee in bank- "ruptcy."

It is suggested that the amendment of 1903 was not intended as a negation of what is above said, but merely to affirm the summary jurisdiction and power given to Bankruptcy Courts, by the act of 1898, upon which some doubt may have been cast by the opinion in that case; the pertinent part of the jurisdictional clause of the act of 1898 was as follows:

"* * * Courts of Bankruptcy, as hereinbefore "defined, viz., the District Courts of the United "States * * * are hereby invested * * * with "such jurisdiction at law or in equity as will enable "them to exercise original jurisdiction in bankruptcy "proceedings, in vacation in chambers and during "their respective terms * * * to * * * (7) "cause the estates of bankrupts to be collected *and de-* "*termine controversies in relation thereto* except as "herein otherwise provided; * * * (15) make "such orders, issue such process and enter such judg- "ments in addition to those specially provided for as "may be necessary for the enforcement of the pro- "visions of this act * * *"

The dictum in the Bardes case, conflicting with the above suggestion, was expressly declared an inadvertence in the case of Bryan vs. Bernheimer, 181 U. S., 197.

Since the *jurisdiction* of the Bankruptcy Court was, by the amendment of 1903, made to depend upon the question *whether or not a voidable preference was given,* and since the merits of the case would in effect have to be passed upon in determining the question of jurisdiction, it was manifestly intended that the Bankruptcy Court should not exercise the power of dispossession or "recovery" given it by the Amendment of 1903 except in clear cases and that in proper cases it should act summarily for the purpose of preservation and administration of the estate, (Babbett vs. Dutcher, 216 U. S., 102), and not for the purpose of cutting off the right of trial from strangers to the Bankruptcy Court who claim adversely thereto. See the principles expressed in Smith vs. Mason, 14 Wall, 419; L. T. Co. vs. Comingore, 184 U. S., 24.

In view of the well known rules of construction of statutes in relation to the powers of courts of limited jurisdiction, (Sutherland on Stat. Const. 1st Ed. S., 435), and the several meanings that are given to the word "recovery," it can hardly be doubted that the sense in which it was here used was the most limited, being such jurisdiction as a Justice of the Peace would exercise for distraint of property of value beyond the jurisdiction of his court. Stroud's Jud. Dict., citing Haines vs. Welch, L. R. 4, C. P. 91.

It necessarily results from the wording of that amendment that in the absence of consent or acquiescence of parties, every judgment rendered by the Bankruptcy Court involving *title* as between the bankrupt and adverse claimants would be, if wrong, beyond the powers intended to be vested in the Court of Bankruptcy.

Therefore, it was the ministerial power of determining whether the court should direct its officer to lay hold on certain property, that was given, and not the judicial power of determining title; and this view is in harmony with the character of the Bankruptcy Court as a tribunal for *administration* rather than for *judicial* work—a Court always in session for the determination summarily of the questions arising in the course of a vigorous administration including adjudication of all rights in the property that is admittedly a part of the *res,* and having no jury for plenary trial of adverse claims to the estate, nor other such machinery as, with due respect for the constitution, that its jurisdiction could be forced

upon strangers who hold some object or fund disputing that it is part of the *res*. Where it has undisputed power over the *res*, it is necessarily an exclusive power. As said by this Court in the case of U. S. Fid. Co. vs. Bray, decided at last term, L. C. P. Co. Adv. Sheets, p. 625, of October term, 1911:

> "A distinct purpose of the bankruptcy act is to sub-
> "ject the administration of the *estates of bankrupts* to
> "the control of tribunals clothed with authority and
> "charged with the duty of proceeding to final settle-
> "ment and distribution in a *summary way*, as are the
> "Courts of Bankruptcy. Creditors are entitled to have
> "this authority exercised and justly may complain,
> "when, as here, an important part of the administra-
> "tion is sought to be effected through the slower and
> "less appropriate processes of a plenary suit in
> "equity in another Court, involving collateral and ex-
> "traneous matters with which they have no concern,
> "such as the controversy between the complainant and
> "the indemnitor banks."

In the light of this clear declaration, applied to what was admittedly a part of the estate, the collateral principle can be seen that Bankruptcy Courts are not proper tribunals to try adverse claims of *right* to property which is not admitted to be part of the *res*.

Since the jurisdiction there exercised is distinctly *in rem* it would be a contradiction for an adverse claimant to go into the Bankruptcy Court to assert his claim. The amendments of 1903 do not, therefore, make provision for any such absurdity as for the adverse claimant, disputing the bankrupt's right to the property in question, to go into the Bankruptcy Court to assert his claim. Those amendments in terms only apply to suits brought *by* the trustee in bankruptcy.

By going into the Bankruptcy Court and thus admitting its power over the property, the adverse claimant would be conceding half his case and waiving constitutional protections. (Coder vs. Arts. 213 U. S., 235.) For there has never been any doubt but that an adverse claimant could estop himself by *consenting* to the Bankruptcy Court's exercise of jurisdiction.

Bardes vs. Blank, 178 U. S., 539.
Harris vs. Bank, 216 U. S., 384.
Bryan vs. Bernheimer, 181 U. S., 197.

It is not believed that S. 2 of Article 3 of the Constitution could be construed as authorizing the enactment of a law empowering a Bankruptcy Court as now constituted to wrest unto itself without consent of parties the exclusive office of settling finally a conflicting claim of *right* between itself or its agent, the trustee, and one claiming property adversely to the trustee; the principle that no one should be judge in his own cause being remotely involved. The *only* theory upon which such jurisdiction could be claimed is that the judicial power extends to "cases arising under the constitution and laws of the United States," and the laws, (passed in pursuance of the uniform bankruptcy clause), provide for adjudication in the District Court of questions of right arising in bankruptcy proceedings, and for the reduction into possession and the settlement and distribution of the estate. To extend the power beyond the bankruptcy proceedings, themselves, and to make it applicable to persons who are in no way connected with the bankruptcy proceedings, but have their claims wholly independent of the bankrupt, would be as rational as to extend it to any other claim asserted in good faith in distinct hostility to the bankruptcy estate. The power to regulate bankruptcy settlements was never intended to include the final and conclusive settlement of controversies between a bankruptcy estate and an adverse claimant. Such claims will usually depend, as here, upon the law of the State, Sexton vs. Kessler, *Supra;* Byers vs. McAuley, 149 U. S., 620; L. Ed. 811, and will require, like any other plenary litigation between adverse parties, the protection afforded by the 5th and 7th amendments, and such trials *being great primary objects of government,* cannot be regarded as mere incidents of "uniform laws on the subject of Bankruptcies."

Smith vs. Mason, 14 Wall, 433.

There could be no plausible pretense that the rights of these appellants had been tried in the Bankruptcy Court. The Circuit Court of Appeals in its opinion on the proceeding against LeBlanc declared:

> "There is nothing in the subject matter of dispute "and certainly nothing in the character of the pro- "ceedings that could be construed into a plenary suit "in equity."

The injunction here complained of must have been based upon the theory that the Bankruptcy Court was the only place for assertion of Appellants' claim. (Tr. p. 8.)

IX.

The Arrangment here involved is not a voidable preference.

The petition of these appellants in the State Court, (Tr. pp. 23 to 30), the allegations of which were adopted in their answer here, (Tr. p. 18), show that in January, 1906, the bankrupt, E. F. Moore, was indebted to Beaumont Rice Mills, (the firm of these appellants), in the sum of $6177.03, (Tr. p. 23), for security of which they had a lien on about $3000 worth of live stock, implements and tools of Moore or Moore and Bridgeman (Tr. p. 27). That Moore and Bridgeman had then undertaken to cultivate in rice about 1400 acres of the Stengle farm the advances therefor to the extent of $6000 to be furnished by Houston Rice Milling Company, with mortgage on all the crop to be grown thereon. That Moore and Bridgeman were then insolvent and it was contemplated that their crop on the Stengle farm would probably be consumed in paying their indebtedness to the Houston Rice Milling Company, and that all their teams and resources which they then had would be occupied in producing the crop on the Stengle land, (Tr. p. 24); that E. F. Moore proposed to Broussard to rent about 280 acres, the McCrimmin farm, and cultivate it in rice with a view to making its crop discharge his indebtedness to Beaumont Rice Mills, after first paying out of it the rent, water rates and other expenses payable at and after harvest, and an addi-toinal advancement for seed and supplies, to the amount of $1000 necessary to put the crop in; that Broussard, as manager for Beaumont Rice Mills agreed to this in January and assured the landlord of the payment of the rent and made advances to the amount of $1139.80 for the cultivation of the crop, but did not take written evidence of the contract until April 5th, 1906, which was about the time the first of said advancements were made; that on the last named date a written transfer of the crop was made to said Broussard by E. F. Moore, in order that he might hold same as trustee to secure the performance of the said agreement, that same was filed for registration June 8th, 1906, (Tr. pp. 24 and 25); that Broussard, at the time of the agreement took control of the crop, and long prior to the execution of said agreement, assumed the obligation to pay the rent for the year 1906, (Tr. p. 26); that about June 15, 1906, he agreed with Moore that he would take the crop as it then was in satisfaction of all the obligations of said E. F. Moore to Beaumont Rice Mills, (Tr. p. 26); that afterward on July 26th, 1906, said Moore and Bridgeman filed their voluntary peti-

tion in bankruptcy, but believing their claim satisfied by said McCrimmin crop the Beaumont Rice Mills permitted the time for filing claims against the bankrupts to elapse and had never filed any claim against them, (Tr. p. 27); that in addition to the above recited advancements, and surrender of lien on livestock appellants' firm had expended sums aggregating about $4160 in harvesting, threshing, sacking, hauling and storing the rice, (Tr. p. 27 and p. 29), some of it being actually paid to the trustee in bankruptcy as such for assistance from the employees and teams of the estate. In their answer herein these appellants allege they acquired their right to the crop without reasonable cause to believe it was intended to give them a preference, (Tr. p. 20); or that any person would suffer injury thereby, (Tr. p. 29).

The above is intended as a full statement of the pertinent parts of the pleadings relating to the nature of appellants' claim to the crop.

It shows that appellant's firm received the written evidence of the agreement within four months previous to the bankruptcy and that they then knew Moore to be insolvent, but it further shows there was no preference involved because the contract did not have to do with any existing asset, the transfer of which could prejudicially affect the interest of other creditors, but contemplated the production of a crop which could have had no existence but for the contract, which contract therefore actually benefitted general creditors by releasing lien-covered property to them and by reducing the indebtedness upon which dividends of the previously available assets would need to be figured.

It is unnecessary to again repeat here the arrangements, so favorable to the bankrupt's estate, under which the McCrimmin crop was made possible by the firm of these appellants, which create an unanswerable claim to the protection of equity.

Hurley vs. Atchison T. & S. F. R. Co., 213 U. S., 134.

X.

The arrangement was made by parol more than four months prior to bankruptcy and was of such character that it must be upheld in equity and under the Texas law.

It is shown that the agreement in question was really made by parol in January, 1906, more than six months prior to bankruptcy upon the equitable basis above recited; that before anything was done under it, beyond Broussard's as-

suring the landlord that his rent would be paid, and before the seed was planted, but a little less than four months before bankruptcy, Moore, on April 5th, 1906, executed the written transfer of the crop to Broussard.

Sexton vs. Kessler & Co., October term, 1911, p. 657 of L. C. P. Cos. Adv. Sheets.
Red River Bank vs. Higgins, 72 T. 56.
Ry. vs. Gentry, 69 T., 633.
Richardson vs. Washington, 88 T., 345.

This Court in Thompson vs. Fairbanks, 196 U. S., 524, quotes the following from 98 Fed., 974, with approval:

> "What was done was in pursuance of the pre-existing contract, to which no objection is made. Camp furnished the money out of which the property, which is the subject of the sale to him, was created. He had good right, in equity and in law, to make provisions for the security of the money so advanced, and the property purchased by his money is a legitimate security, and one frequently employed. There is always a strong equity in favor of a lien by one who advances money upon the property which is the product of the money so advanced. This was what the parties intended at the time, and to this, as already stated, there is, and can be, no objection in law or in morals. And so when, at a later date, but still prior to the filing of the petition in bankruptcy, Camp exercised his rights, under this valid and equitable arrangement, to possess himself of the property, and make sale of it in pursuance of his contract, he was not guilty of securing a preference under the bankruptcy law."

So in Hurley vs. Atchison T. & S. F. R. Co., 213 U. S., 314, this Court, speaking through Justice Brewer, says:

> "That the coal for which this money was advanced was not yet mined, but remained in the ground to be mined and delivered from day to day, as required, does not change the transaction into one of an ordinary independent loan on the credit of the coal company or upon express mortgage security. It implies a purpose that the coal, as mined, should be delivered, and is, from an equitable standpoint, to be considered as a pledge of the *unmined* coal to the extent of the advancement. The equitable rights of parties were not changed by the commencement of

"bankruptcy proceedings. All obligations of a legal "and equitable nature remained undisturbed thereby. "If there had been no bankruptcy proceedings, the coal "as mined was, according to the understanding of the "parties, to be delivered as already paid for by the ad- "vancement."

The principle involved in this division of our argument is this:

When one is in position to give or withhold the basis of a claim of right then the restrictions imposed by law, which ordinarily limit his dealings with the possessors of such basis, may be abolished as one of the conditions of his granting the basis of the claim of right.

In this instance the ordinary restriction is that no creditor can take advantage of a preference given him within four months before bankruptcy: but it is believed that such restriction would have no application to a subject whose existence essentially depended upon the contract out of which the preference arises.

The case of Moore Cortes Canal Co. vs. Gyles (Tex. Ct. of Civ. App.), 82 S. W. Rep., 350, involving a wholly different set of facts, yet perfectly illustrates the principle. For in that case a water company was, as a public service company, under the statutory restriction that it must not unreasonably burden those *landholders* who obtained service from it. But the restriction was held to have no application in favor of one who obtained his right to the *land* from the water company under the very conditions complained of as being unreasonable. By parity of reasoning it may be said that what alone could have brought the McCrimmin crop into existence was a contract one of whose terms was that the crop be appropriated to appellants.

SUMMARY.

These Appellants had a good and equitable right to the McCrimmin crop; to say the least, their claims are asserted under a contract such as the very restricted language of the Amendments of 1903 has no application to, and, therefore, their adverse claim is such as the Bankruptcy Court could not decide upon, and the State District Court should be left undisturbed, with assurance that the Bankruptcy Court will respect its decision; and if it should be determined to the contrary, i. e., if this Court should hold that the jurisdiction of the Bankruptcy Court over such claim is concurrent with

that of the State Court, yet it is manifest that in so far as these appellants' claim to the property or fund is involved there had never been or did not then exist, any proceeding of the Bankruptcy Court that was inconsistent or inharmonious with the State Court's exercise of jurisdiction over the fund which, subsequent to the beginning of its exercise of jurisdiction and control, was taken and appropriated by LeBlanc and his successor, Crawford, in violation of the State Court order.

Appellants, therefore, pray this Court to reverse the orders of the District Court of the United States and of the Circuit Court of Appeals and that such directions may be given as will obviate the possibility of further clash of process, and that full justice may be done.

Respectfully Submitted,

A. D. LIPSCOMB,
Counsel for Appellants.

FREDERICK S. TYLER,

Solicitors for Appellants.

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1912.

No. 83

J. M. HEBERT, B. C. HEBERT, M. S. HAMSHIRE, L. HAMSHIRE, J. A. BORDAGES AND J. E. BROUSSARD, APPELLANTS,

vs.

W. J. CRAWFORD, TRUSTEE, AND E. J. LEBLANC, APPELLEES

REPLY TO BRIEF OF W. J. CRAWFORD

The appellants object to the brief herein filed for W. J. Crawford for the following reasons to-wit:

The statements contained in said brief have no support in the record at all, in great part, and those which are at all based upon the record are based solely and only upon allegations contained in the bill for injunction filed by the said W. J. Crawford which were not supported by any evidence and which were not admitted but denied by these appellants, and therefore, under settled rules, must be regarded as untrue,

since appellee, as plaintiff, submitted the cause on bill and answer. (For authorities see p. 5 of Brief for Appellants). For example, in said brief of Crawford, on page one thereof, it is said:

> "That they (Moore & Bridgeman) were the owners of "crops of rice grown upon two farms known respective- "ly as the Stengle and McCrimmin farms."

While such an allegation was made in the said bill yet there was no evidence taken in support of same but the cause was submitted on bill and answer and said allegation was pointedly denied by the answer, in so far as it related to the McCrimmin crop, as shown on page 15 of the record.

Again on the same page of said brief of Crawford it is said: "The Beaumont Rice Mills, a co-partnership composed of appellants and LeBlanc, were scheduled as creditors and their claims stated at $9000."

The above is all the statement in reference thereto that is contained in said brief of Crawford, but the truth is stated in the answer of these appellants on page 14 of the trancsript and further in an exhibit made a part of said answer on page 26 of the transcript where it is shown that while such a purported claim was scheduled by the bankrupts, yet it was without the knowledge or consent of these appellants and that they never proved up nor asserted such a claim, and that they deemed all claims which they previously had against the bankrupts satisfied by the transfer to their manager, Broussard, of the McCrimmin crop.

Again on page 2 of the brief of Crawford it is stated that because of LeBlanc's failure to file an inventory creditors filed their petition to remove LeBlanc and that thereupon LeBlanc tendered his resignation. The true facts relating to this are stated in the answer, as follows:

> "Defendants aver that when said alleged creditors be- "gan to contend that the McCrimmin crop was a part of "the bankrupt estate, the said E. J. LeBlanc then real- "izing for the first time that he was being placed in an

"attitude of apparently representing two adverse claim-
"ants of the same property, tendered his resignation as
"trustee, but on the motion of said alleged creditors his
"tender was declined."

Again on page 2 of the said brief of Crawford it is said that the trustee LeBlanc, after qualifying as such, permitted the bankrupts to remain in possession of the property and that the crop of rice raised on the McCrimmin land was taken in charge by the trustee.

That again is one of the unproven allegations of the original bill of Crawford which was denied by the answer and therefore abandoned by submitting the cause on bill and answer. It was shown by the answer of these appellants that the crop never came into the possession of the trustee, LeBlanc, but that same was at all times under the complete control and management of, and in the possession of, J. E. Broussard, manager of the Beaumont Rice Mills; and on page 16 of the record it is shown in section 5 of the answer that while tools and implements of the bankrupt estate were used in harvesting same, yet it was under contract with the Beaumont Rice Mills to pay the customary price of the service; and on page 27, in an exhibit made a part of these appellants' said answer it is shown that the Beaumont Rice Mills actually paid to the estate all of the said charges therefor besides furnishing the sacks and paying for the threshing and hauling and all other things necessary for the harvesting and preservation of said rice, in the aggregate amount of $6337.79.

On page 3 of said brief of Crawford it is asserted that from all the evidence produced in the *ex parte* proceeding against LeBlanc as trustee the court held that the crop grown on the McCrimmin farm was the property of the bankrupts. The answer of these appellants on page 17 of the transcript shows:

"They have abundant evidence of disinterested par-
"ties not adduced on said hearing to show that long be-
"fore the McCrimmin land was rented by the bankrupts,
"or either of them, the crop upon it was destined for the
"Beaumont Rice Mills, the latter agreeing with the les-
"sor to pay the rent upon that consideration and the said

"crop being made possibly only by the advancements "made by the Beaumont Rice Mills under an agreement "that same should be applied in discharge of a debt ex- "isting in favor of the Beaumont Rice Mills, all ar- "ranged for long before the said crop had even a poten- "tial existence; besides evidence that Beaumont Rice "Mills surrendered liens upon other property of the "estate, greatly to the advantage of same, on obtaining "their right to the McCrimmin crop; and moreover on "many points conclusive of any claim by said estate, "these defendants will be able to educe additional evi- "dence in their own support on a plenary trial. These "defendants deny that they, through E. J. LeBlanc, sub- "mitted their rights to the determination of the referee "in said proceedings, and aver the fact to be that they "were not parties to said proceedings, and that their "firm was not, but that the proceeding consisted mere- "ly in a report by the said E. J. LeBlanc as trustee in "bankruptcy with exceptions urged thereto by creditors; "and they say they were never in any capacity parties, "nor was their firm ever a party to any of said bank- "ruptcy proceedings, and that neither of them ever filed "a claim against said bankrupts, but that they consid- "ered their claims had been extinguished by the trans- "fer to J. E. Broussard, in trust for them, of the said "McCrimmin crop, the written evidences of which had "been executed and filed for registration long before "bankruptcy was contemplated by any one connected "with the matter."

On page 3 of said brief of Crawford he says, "being a partner in the Beaumont Rice Mills, LeBlanc had notice that his firm was scheduled as a creditor to the amount of $9000.00." The answer to this is that neither of the appellants nor LeBlanc ever asserted or filed a claim against said bankrupts, as shown in their answer on page 17 of the transcript; and these appellants show in their answer on page 14 of this transcript that they had no knowledge why Moore & Bridgeman scheduled a $9000 claim in their favor and that it was without their knowledge and consent; and the same allegation was made in the petition of these appellants in the District Court as shown on page 26 of the transcript; and the fact that LeBlanc as trustee took no notice of that item in the schedule is readily explained by the allegation of said answer of these appellants on page 14 and again on page 23 of the transcript

where it is shown that while LeBlanc was legally a member of the partnership of these defendants, yet practically he was only acting as clean rice salesman on salary, the said Broussard being general manager; and that LeBlanc therefore was not charged with responsibility for or knowledge of the falsity in said schedule. LeBlanc was appointed trustee *at the instance of the creditors* and these appellants made no objection thereto because they had no doubt of their right to the McCrimmin crop, (Transcript, p. 27); and the creditors and this trustee, Crawford, have only asserted a claim to said crop on behalf of the estate after the chances of the season had matured it into a value beyond their expectation. (Tr. p. 20).

Again on page 4, probably as the result of clerical error, the said brief of Crawford states that "The record in that proceeding showed that the property was claimed by the trustee but delivered to the Beaumont Rice Mills." The answer of these appellants on page 20 of the transcript, which was admitted by force of the submission of the case on bill and answer by appellee, Crawford, is that the said E. J. LeBlanc never at any time claimed or actually had possession of said McCrimmin crop.

On page 4 of the said brief of Crawford, assertions of collusion and fraud are made against these appellants and LeBlanc which, it is needless to say, have no foundation in the record and cannot be reconciled with the answer, (Tr. pp. 16 and 17).

On page 6 of said brief of Crawford it is said that the supplemental petition filed in the State District Court was against appellee, Crawford, as trustee and that the prayer was for judgment against appellee, Crawford, as trustee. That allegation is not correct, as shown on pages 31 and 32 of the transcript, where the supplemental petition appears as an exhibit, and the obvious reason for not giving the prayer that form as against appellee, Crawford, was that it was presumed by these appellants that the United States District Court would never recognize as official and representative of it, his wrongful act of taking and retaining the funds with notice of their having been taken from the partnership assets

of these appellants in violation of the State Court injunction, but would treat his violation of the State Court order as his own private wrong.

The entire argument of appellee, Crawford, being based upon a purported state of facts wholly at variance with the record in this cause, we deem it unnecessary to make further reply to it or to review the authorities cited therein. To the appellees' suggestion that these appellants could, at slight inconvenience, have prevented LeBlanc from drawing their funds, in violation of the State Court injunction, we reply that it was the peaceful and equitable method pursued by them, of protesting against his taking it, and giving notice to his successor of the circumstances under which he obtained it. Appellants believe this court will approve that course as being preferable to the use of forcible methods against him, which, if successful, would have left him to be immediately committeed by the United States District Court for contempt, in accordance with the Judge's assertion that he would do so if the sum was not immediately brought into court by him. He had shown in his report to the court that he had no other means of obtaining the sum then by resort to the partnership assets, in violation of the State Court injunction, (Tr. p. 19). When the Federal District Court nevertheless ordered him to immediately bring in the sum, the only reasonable course open to these appellants was to protest against his taking the sum and to give timely notice to his successor, in full confidence that here at least the right of these appellants to an orderly trial of their claim of right to the property would be recognized, and that the principles of comity as well as the settled rule of law imposing on courts the *obligation* to observe those principles in relation to other courts of the same territorial jurisdiction, would receive such recognition here as to forbid sanction to a violation of the State Court's order.

Respectfully submitted.

FREDERICH S. TYLER,
A. D. LIPSCOMB,
Solicitors for Appellants.

Of Counsel for Appellants.

No. 83

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1912

J. M. HEBERT, B. C. HEBERT, M. S. HAMSHIRE, L. HAMSHIRE, J. A. BORDAGES AND J. E. BROUSSARD,
Appellants,

vs.

W. J. CRAWFORD, TRUSTEE, AND E. J. LEBLANC,
Appellees.

Appeal to the United States Circuit Court of Appeals for the Fifth Circuit.

BRIEF FOR W. J. CRAWFORD, TRUSTEE, APPELLANT.

(22232)

STATEMENT.

On teh 16th day of July, 1906, Moore & Bridgeman, a firm composed of E. F. Moore and F. W. Bridgeman, filed their voluntary petition in bankruptcy in the court from which this cause was taken by appeal to the Circuit Court of Appeals. They were adjudged bankrupts on the 26th day of said month. They were the owners of crops of rice grown upon two farms known respectively as the Stengle and McCrimmin farms. The former consisted of about 1100 acres, and the latter of 280 acres, both of which were cultivated in rice. They were the owners also of a number of teams and a lot of agricultural implements and machinery. The crop grown on the Stengle farm and the teams, implements and machinery were scheduled as assets by the bankrupts. The crop of rice grown on the McCrimmin farm, out of which this controversy arose, was not scheduled. The Beaumont Rice Mills, a copartnership composed of J. M. Hebert, B. C. Hebert, L. Hamshire, M. S. Hamshire, J. A. Bordages and J. E. Broussard, all of whom are appellants herein, and E. J. LeBlanc, appellee, were scheduled as creditors, and their claims stated at $9,000. The Parlin & Orendorff Company, Parlin & Orendorff Implement Company, Houston Rice Mills and L. W. Levy & Co. were scheduled as creditors, and each has proven its claim. E. J. LeBlanc was appointed trustee by the Referee and qualified as such by

giving his bond with J. E. Broussard and others as securities (Tr. pp. 2 and 15). He filed no inventory of the estate which came into his possession. For failing to do so the Parlin & Orendorff Implement Company and other creditors whose claims have been allowed filed their petition to remove him. Thereupon said trustee tendered his resignation, and filed with his petition resigning his trust what purported to be an account of his administration of the estate which came into his possession. The said trustee after qualifying as such permitted the bankrupts to remain in the possession thereof and to harvest the crops and manage and to control the property as they had done prior to filing their petition in bankruptcy (Tr. p. 3). The crop of rice raised on the McCrimmin farm was taken in charge by the trustee and harvested and threshed, and from this crop alone the trustee obtained 3583 sacks, of the value of $11,462.25 after paying two sacks per acre for water rent.

After this crop came into his possession he delivered it to the Beaumont Rice Mills, in which he was a partner, and made no account of it in the administration of the estate under his charge. Having failed to charge himself with the value of this rice and with the sum received for threshing other rice, the Parlin & Orendorff Company, the Parlin & Orendorff Implement Company, Houston Rice Mills and L. W. Levy & Co. filed exceptions to his account presented with his application to resign, and by such exceptions undertook to charge the trustee with the value of the McCrimmin rice and sums received from other parties for threshing, alleging in said exceptions that the crop of rice grown on the McCrimmin farm was the property of the bankrupts and that it consisted of 3583 sacks of the value of $11,642.25, and that it was taken in charge by the trustee as the property of said bankrupts and converted to his own use and to the use of the Beaumont Rice Mills, a co-partnership in which he was a partner (Tr. p. 3).

Upon the hearing of said exceptions the Referee refused to charge said trustee with the value of said McCrimmin rice, declaring that he had no jurisdiction to do so. Upon a petition for review the judgment of the Referee was overruled in the District Court, and the said trustee was charged with the value of said McCrimmin rice, amounting in value to $11,642.25, and with $345.20 for threshing for one Earl Keener, as claimed by said excepting creditors, and said trustee was

by the judgment of the District Court directed to pay said sums, amounting in the aggregate to $11,906.45, to the credit of the estate in his charge, and to include the same in the account of his administration, the court holding from all the evidence produced upon said trial that said crop grown on the McCrimmin farm was the property of the bankrupts, that it consisted of 3583 sacks, after paying the water rent, and was of the value of $11,642.25, and that it came into the possession of said trustee as the property of said bankrupts and was converted by him to his own use or to the use of his partnership (Tr. pp. 44-45).

The said E. J. LeBlanc, trustee, appealed from the decision of the District Court, and also filed his petition for a review of its judgment.

Upon the hearing of said cause upon appeal the same was dismissed, the petition for review was denied, and the judgment of the lower court in all things affirmed. The said causes upon appeal and petition for review were tried in the Honorable Circuit Court of Appeals for the Fifth Circuit on the 26th day of January, 1909, and are reported in Vol. 21, at page 651, American Bankruptcy Report.

The resignation of E. J. LeBlanc, trustee, and the accompanying account were filed in the month of December, 1906 (Tr. p. 3). It is charged in the bill and confessed in the answer that J. E. Broussard, the active manager of the Beaumont Rice Mills and surety on the bond of E. J. LeBlanc as trustee, was a witness and his testimony taken upon the hearing of all the exceptions filed by the creditors to the trustee's account (Tr. pp. 4 and 16). A copy of the schedules of the bankrupt is required by law to be furnished the trustee and presumed to have been complied with in this instance. Being a partner in the Beaumont Rice Mills, LeBlanc had notice that his firm was scheduled as a creditor to the amount of $9000. On the hearing of the exceptions to the trustee's report all the questions concerning the integrity of the transaction by which the Beaumont Rice Mills claimed to have had a lien on the McCrimmin rice, and afterwards to have become the owner of it by some character of purchase in satisfaction of its debt, were fully inquired into, its account with the bankrupts thoroughly examined, and all questions about whether they were scheduled as creditors fully presented. Broussard was examined and knew that the

Beaumont Rice Mills was scheduled as a creditor. The claim of his partnership to the McCrimmin rice was submitted to the bankrupt court upon all the evidence in the case, in the effort of the trustee to relieve himself from liability for its value. The of the trustee to relive himself from liability for its value. The record in that proceeding showed that the property was claimed by the trustee but delivered to the Beaumont Rice Mills and not to the estate of said bankrupts, and that he had turned it over to them for that reason, and said claim was discredited and denied, and said property held to be the property of the bankrupts and to have come into the possession of the trustee as such.

If appellants ever had any interest in or lien upon the McCrimmin rice they had not undertaken to establish it in the bankrupt court, which had jurisdiction of it. They have by collusion with the bankrupts and with the connivance of the trustee to take this property regardless of the position in which the trustee found it or of the opinion of any court as to the justness or validity of their claim. Finding, however, that the trustee has by his treachery and collusion with them to obtain this property rendered himself liable for its value, and being unwilling to submit any claim they had to it to the jurisdiction of the court whose authority they had treated with contempt, they filed their petition on the 12th day of March, 1909, in the District Court of Jefferson County, Sixtieth Judicial District of Texas, against their fellow conspirator and partner, E. J. LeBlanc, ostensibly for the purpose of preventing him from diverting the funds of the partnership to the payment of this judgment, but really for the purpose of undoing the judgment of the bankrupt court and of having it reviewed and if possible set aside by a judgment of the State court and of recovering the value of the property which had been held to be the property of the bankrupts upon a full hearing of all the testimony which appellants could produce upon that issue. Upon presenting the petition in said cause to the judge of said court, a preliminary injunction was directed to issue as prayed for upon the plaintiffs therein giving bond in the sum of $10,000, conditioned according to law, and upon the condition that the plaintiffs and their sureties pay over to the defendant therein, E. J. LeBlanc, or his successors in trust such sum as might be adjudged against them if any in said action, and upon

the further condition that plaintiffs would not prosecute said action until a successor of E. J. LeBlanc should have been appointed (Tr. pp. 29-30).

The mandate from the Circuit Court of Appeals in the cause appealed by E. J. LeBlanc was filed in the District Court, from which said appeal was taken, on the 3rd day of April, 1909. The defendant in said action never having paid or deposited the sum required of him by the judgment and decree of the District Court and of the Circuit Court of Appeals, the creditors of said bankrupts at whose instance exceptions had been taken to the report of said trustee on the 9th day of April, 1909, filed their application before the Honorable Judge of the District Court against the said E. J. LeBlanc, trustee, for an order to show cause why the sum of money required to be deposited by him was not paid in obedience to said order, and why he should not be punished for contempt of court in case he persisted in his refusal to pay (Tr. pp. 42-44).

Upon the hearing of said application the said E. J. LeBlanc, trustee, was directed to pay the same forthwith to H. H. Haley, Deputy Clerk of said Court (Tr. p. 45), and in obedience to said order the said E. J. LeBlanc, trustee, did pay the said sum, with interest amounting in all to $12,486, to the said H. H. Haley, Deputy Clerk. Appellee was thereupon appointed trustee of the estates of said Moore & Bridgeman, bankrupts, and the said sum deposited with the said H. H. Haley, Clerk, was paid over to him as trustee, and he has ever since had the same in his possession, as shown by the allegations of the bill (Tr. p. 6). After the payment of said sum to the said H. H. Haley, Deputy District Clerk, and after said sum was paid over to appellee by the said Haley, appellants on the 20th day of April, 1909, filed a supplemental petition in said District Court of Jefferson County, Sixtieth Judicial District of Texas, making appellee as trustee of the estates of Moore & Bridgeman, bankrupts, and the Gulf National Bank of Beaumont, in which appellee had deposited the funds received from the said E. J. LeBlanc in obedience to the order of the court, parties defendant in said action. It is alleged in said supplemental petition that appellee and the said Gulf National Bank received the said fund with interest; that the said E. J. LeBlanc, trustee, had withdrawn the same from the funds of the complainants in said action. They further state that they have deposited in

said District Court of Jefferson County, Texas, the sum of $11,561.25, with the interest thereon from the 17th day of December, 1907, at the rate of six per cent. per annum, but for what purpose does not appear. Judgment is prayed for against appellee as trustee, and against the Gulf National Bank for the sum deposited by E. J. LeBlanc, trustee, alleged to have been withdrawn from the complainants in said action and deposited with appellee and the said Gulf National Bank, and for any order that might be necessary to secure the observance of the writ of injunction which had been issued in said cause (Tr. p. 31). Appellee thereupon filed the bill from which this appeal was taken, praying for an injunction restraining the appellants from further proceeding in their action in the said court to enforce any lien which they claimed against the fund in the possession of the complainant in said bill and from attempting by such action to recover said fund. Upon motion of the complainant therein a temporary injunction was issued which was upon a hearing, after the coming in of the appellant's answer, made final, and the said appellants were perpetually enjoined and restrained from proceeding in the said court to recover said funds (Tr. p. 49). This judgment of the trial court was affirmed on appeal (Tr. p. 56).

Upon the resignation of E. J. LeBlanc it was the duty of the Referee to audit his account. The creditors who had proven their claim against the estate of the bankrupts had the right to file their exceptions and the Referee had the jurisdiction to determine all questions presented thereby. General Order No. 17 in Bankruptcy imposes this duty upon the trustee. When it was ascertained that the McCrimmin rice came to his possession and the value of it was fixed by the judgment of the District Court, from which the trustee appealed, upon the affirmance of that judgment in the Circuit Court of Appeals his liability was fixed irrevocably. That liability was established beyond all controversy. Subsequently, upon the payment of that sum to H. H. Haley, the Deputy Clerk, in obedience to the order of the trial court upon the return of the mandate, and when it was afterwards paid to appellee as trustee of Moore & Bridgeman, it then reached the actual possession of the trustee. All this is apparent from the bill and answer upon which the cause was tried in the lower court. Having reached the possession of the trustee, the sole question for consideration now is whether or

not the bankrupt court having the fund in charge had the right to protect the trustee by injunction against any action brought by the claimants thereto in the State courts.

ARGUMENT.

Appellee maintains the right of the bankrupt court to protect him by injunction against the action brought by appellants in the State District Court of the State of Texas to recover the funds in his hands or to interfere in any manner with his possession thereof, and in support of his contention submits the following authorities:

Revised Statutes U. S., Sec. 720;
Edward Murphy, Second Plaintiff in Error, vs. John Hoffman Co., 211 U. S., 562; 53 L. Ed., 327;
White vs. Schloerb, 178 U. S., 548; 44 L. Ed., 1183;
Whitney vs. Wenman, 198 U. S., 539; 49 L. Ed., 1157;
Muller vs. Nugent, 184 U. S., p. 1; 46 L. Ed., 405;
Gray vs. Larrimore, 188 U. S., 486; 47 L. Ed., 555;
Metcalf vs. Barker, 187 U. S., p. 175; 47 L. Ed., 122;
Clemenshaw vs. International Shirt and Collar Co. et al., 165 Fed., 797;
Bray vs. U. S. Fidelity and Guaranty Co., 170 Fed., p. 689;
In re. Mertens, 131 Fed., p. 507;
Loveland on Bankruptcy, 3rd Ed., p. 105; Sec. 22;
Watkin on Trustees in Bankruptcy, p. 70; Sec. 52.

In Metcalf vs. Barker, 187 U. S., at page 175, it is said: "It is well settled that where property is in the actual possession of the court this draws to it the right to decide upon conflicting claims to its ultimate possession and control."

It is shown by the bill and confessed in the answer that the fund in controversy was in the custody of the bankrupt court and in the possession of the appellee as trustee of Moore & Bridgeport, bankrupts, before the filing of the supplemental petition in the State court to enforce the lien or to recover said fund, and by which the appellee was made a party defendant.

In re. Mertens, the American Woolen Company sold to J. M. Mertens & Co. certain woolen goods in the business, and said goods were in the possession of the purchasers mingled with other goods at the time of the filing of the petition in bankruptcy and were taken in charge by the receiver appoint-

ed in that action, and afterwards by the trustee. The goods were sold by the trustee, and afterwards the American Woolen Company gave notice of the rescission of the contract under which said goods were sold, and brought an action in the State court against Albert K. Hisscock, as receiver, and afterwards trustee, to recover damages for the alleged conversion of said goods. The bankrupt court having the estate of the said bankrupt in charge, on application of the trustee, stayed the action in the State court. The Judge delivering the opinion in said case, on page 513, said:

"When property sold to the bankrupt prior to the proceedings in bankruptcy is found in his possession mingled with his stock in trade or other property it is pressumably his and when the bankruptcy court has taken possession of it and assumed control through its duly appointed receiver before a rescission of the sale, the vendor who assumed thereafter to rescind the sale on the ground of fraud practiced by the vendee (now the bankrupt) and who seeks to recover the property or its proceeds or damages from such officer of the court who has held and sold it pursuant to the order of the court, should be compelled to come into the court having the possession and control of the property and try the question of title thereof there, unless said court is without jurisdiction to try the question or the law of the United States has expressly placed concurrent jurisdiction elsewhere. If the court should find that the sale was procured by fraud then the rescission would be valid and the title would be in the vendor, and he would be entitled to the property, or its value, from the estate of the bankrupt, and this court would so award; but should the court find that such sale was not procured by fraud then the rescission would be of no avail and the title would be in the trustee in bankruptcy when appointed. Is not the bankruptcy court in possession of the property possessed of power and jurisdiction to try and determine this question? or must it await the trial and determination of a suit for conversion against its officer in the State court before proceeding to administer the trust and wind up the banruptcy proceedings? It is conceded that in such a case as this the bankruptcy court may enjoin an action in replevin in the State Court against the receiver or trustee to recover the property. Why may it not enjoin an action in trespass or for conversion brought against the receiver or trustee in bank-

ruptcy in the State court to recover the proceeds of a sale of the property or its value as damages for a conversion based on the claim that the title was in the vendor? Does the one action interfere with the property or proceedings in the court of bankruptcy any more or any less than the other? If so, wherein? Section 720 Revised Statutes United States, above quoted, recognizes the paramount authority of the bankruptcy laws in such case, and does not attempt to forbid the enjoining of suits in the State court by the Federal court as against a provision of the Federal laws permitting such action. This property in question here was included in the trust committed to the receiver and then to the trustee. It was a part of the trust estate. The American Woolen Company attempts to take it out of the trust and from the jurisdiction of the court in bankruptcy by rescinding the sale after such jurisdiction was obtained and asserted by this court. If the sale by the Woolen Company was procured by fraud, then this court should order the trustee to pay it to the value of the property; otherwise it should not. Must this receiver and trustee litigate this question of fraud in the State court and in another judicial district of the United States? Clearly, it seems to this Court the question may be fully determined by the bankruptcy court.

"Section 2 of Sub-Chapter 2 of the Bankruptcy Act (Act July 1, 1898, Chapter 541, 30 Stat. 545, U. S. Comp. St. 1901, p. 3420, as amended February 5, 1903, c. 487, Sec. 1, 32 Stat. 797, U. S. Comp. St. Supp. 1903, p. 409) defines the jurisdiction of courts of bankruptcy, viz.:

" 'That the courts of bankruptcy as heretofore defined * * * are hereby made courts of bankruptcy, and are hereby invested, within their respective territorial limits as now established, or as they may be hereafter changed, with such jurisdiction at law and in equity as will enable them to exercise original jurisdiction in bankruptcy proceedings, in vacation in chambers and during their respective terms as they are now or may be hereafter held, to * * * (7) cause the estates of bankrupts to be collected, reduced to money and distributed and determine controversies in relation thereto, except as herein otherwise provided.' "

Here clearly is jurisdiction to try and determine the title to property found in the possession of the bankrupt purchased by and delivered to him, and which sale is sought to be rescinded

for fraud after the banruptcy proceedings have been instituted and after the bankruptcy court has taken possession of the property. Clearly, this is a controversy in relation to the estate of the bankrupt. In vain we search the act for a provision that deprives the bankruptcy court of power to determine such a controversy regarding the title to the property.

It would seem equally clear that the action of the American Woolen Company in rescinding the sale after the petition in bankruptcy was filed is an attempt to divest the title of the trustee in bankruptcy. Section 70 of the Bankruptcy Act, c. 541, 30 Stat. 565 (U. S. Comp. St. 1901, p. 3451), provides:

"The trustee of the estate of a bankrupt, upon his appointment and qualification, and his successor or successors, if he shall have one or more, upon his or their appointment and qualification shall in turn be vested by operation of law with the title of the bankrupt, as of the date he was adjudged a bankrupt, * * * to all * * * property which prior to the filing of the petition he (the bankrupt) could by any means have transferred or which might have been levied upon and sold under judicial process against him."

This property in question the bankrupt could have sold and transferred, giving good title, at any time before the petition was filed. It is, of course, true that if the property was obtained by fraud the Woolen Company had the right to rescind the sale and recover the property, or its proceeds, or damages for its conversion, if converted. In such case the title of the trustee would be subordinate to that of the Woolen Company. But the question of the right to the property, its possession and disposition, and also the disposition of its proceeds, depends on this question of fact, which the courts of the United States are as competent to try and determine as are those of the State; and having the custody of the property and its proceeds, and jurisdiction to determine the title thereto, this court will not permit the State court to intermeddle either with the property, its proceeds, or with the officer who has disposed of it by order of the Federal Court. Freeman vs. Howe, 24 How., 450, 16 L. Ed., 749. And this court has no hesitation in holding that in this case neither the receiver nor the trustee has been guilty of a conversion or wrongful disposition of the property in question. The conversion, if any, or wrongful disposition of the property, if any, has been committed by this court in bank-

ruptcy, for it has ordered and directed and approved these acts of its officers complained of, and alleged to constitute a conversion of the property, in proceedings duly had in this court, with the American Woolen Company present in court by counsel, and also by petition made by it, asking other disposition of the property than that made by the court. The defendants in the suit in the action in the State court sought to be restrained had done no act not directed by the court. If the authority and jurisdiction of this court in banruptcy is paramount and superior to that of the State court, and it has jurisdiction to determine conflicting claims to property forming a part of the estate of the bankrupt at the time the petition in bankruptcy is filed (and this property concededly was a part of the property of the bankrupt at that time, for the sale had not been rescinded), then this action in the State court should not be permitted to proceed further, for a judgment that either the receiver or trustee has converted this property would be an adjudication by the State court that this court in bankruptcy had no authority or jurisdiction to direct its officers to take possession of and sell the property. The sale to the bankrupt was not void; only voidable. 14 Am. & Eng. Enc. Law (2nd Ed.) 156; Foreman vs. Bigelow, 4 Cliff. 508 Fed. Cas. No. 4, 334; Cobb vs. Hatfield, 46 N. Y. 533; Gould vs. C. C. N. Bank, 86 N. Y., 75; Baird vs. New York, 96 N. Y. 567.

This court cannot assent to the doctrine that its trustee in bankruptcy is liable to an action in the State court as for trespass, trover or conversion, when he follows the order of the court in disposing of property in its possession. This is not a case where the receiver or trustee has taken and held and disposed of property which was outside of the possession and control and apparent ownership of the bankrupt at the time of the filing of the petition in bankruptcy, in which case this court should not and would not interfere. In such case the officer of this court would act on his own responsibility, and take his chances.

In re. Gutman & Wenk, 8 Am. Bankr. R. 255, 114 Fed. 1009, Adams, District Judge, said:

"Ordinarily where the receiver of the court has merely general directions to take into his possession the property of the bankrupt, and there is a claim that he has taken the property of a third person, the court, in conformity with general

principles, would leave him to answer in any proper forum for his individual acts (Buck vs. Colbath, 3 Wall. 344, 18 L. Ed. 257; Covell vs. Heyman, 111 U. S. 176, 4 Sup. Ct. 355, 28 L. Ed. 390; McNulta vs. Lochridge, 141 U. S. 327, 12 Sup. Ct. 11, 35 L. Ed. 796; Central Trust Co. vs. East Tenn. V. & G. Ry. Co., C. C. 59 Fed. 523; High Inj. Sec. 298; Hale vs. Bugg, C. C., 82 Fed. 33); but where it appears without dispute, as it does here, that the third party cannot possibly have any legal rights to be established by the litigation in the State court, and the result of permitting it to be continued would not only suffer an injustice to the receiver, but indirectly tend to embarrass this court in administering the estate, the equitable powers of the court should be exercised both for the prevention of the injustice and to protect the court's full jurisdiction. Dietzsch vs. Huidekoper, 103 U. S. 494 (26 L. Ed. 497); Chapman vs. Brewer, 114 U. S. 158 (5 Sup. Ct. 799, 29 L. Ed., 83); Garner vs. Second Nat. Bank of Providence, 67 Fed. 833 (16 C. C. A. 86); James vs. Central Trust Co., 98 Fed. 489 (39 C. C. A. 126); Mueller vs. Nugent (184 U. S. 1, 22 Sup. Ct. 269, 46 L. Ed. 405); 7 Am. Bankr. R. 224."

In Mueller vs. Nugent, 184 U. S. 1, 22 Sup. Ct. 269, 46 L. Ed., 405, 7 Am. Bankr. R. 234, it was decided:

"It is as true of the present law as it was of that of 1867 that the filing of the petition is a caveat to all the world, and, in effect, an attachment and injunction (Bank vs. Sherman, 101 U. S. 407, 25 L. Ed. 866); and on adjudication title to the bankrupt's property became vested in the trustee (sections 70, 21e), with actual or constructive possession, and placed in the custody of the bankruptcy court."

So here the filing of the petition in bankruptcy was notice to all the world of the pendency of the proceeding, and, in effect, an attachment of this property, and an injunction against all persons prohibiting them from intermeddling with it. This court took immediate custody of the property through its receiver.

In Mueller vs. Nugent, supra, the bankrupt had delivered, shortly before the petition was filed, property to a third person, who had no adverse claim to it; and he refused to deliver it to the trustee. In the summary application to compel this third person to deliver the property the Supreme Court said,

referring to teh necessity of a suit in the Circuit or State Court:

"If it be so, the grant of jurisdiction to cause the estates of bankrupts to be collected, and to determine controversies relating thereto, would be seriously impaired, and in many respects rendered practically inefficient. The bankruptcy court would be helpless, indeed, if the bare refusal to turn over could conclusively operate to drive the trustee to an action to recover as for an indebtedness, or a conversion, or to proceedings in chancery, at the risk of the accompaniments of delay, complication and expense, intended to be avoided by the simpler methods of the bankrupt law."

Here we find not only a direct affirmance of the power of the bankruptcy court to determine conflicting claims to property in the possession of the court, actually or constructively, but a condemnation of the theory that in case of dispute as to title the bankruptcy court should be subjected to the expense, delay, and embarrassment incident to the settlement of that question in some other tribunal—as the State court. It is well known that this action brought in the State court against the receiver and trustee cannot be reached for trial in New York county in less than two or three years, and to permit it to proceed would delay the settleemnt of this bankrupt estate for years. The whole question may be determined is this court, even allowing for an appeal to the Circuit Court of Appeals, in a few months.

In the case of White vs. Schloerb, 178 U. S., 542, the Justice delivering the opinion said: "In this case the statement certified by the Circuit Court of Appeals shows that after the adjudication of the bankrupt property in the possession of the bankruptcy court was prior to the qualification of the trustee taken by a Sheriff under a replevin writ which was issued from the State court. The bankrupts filed a petition in the U. S. District Court, wherein the court was requested to enjoin the holders of the property from disposing of the property and to compel them to re-deliver it to the District Court. Upon the filing of this petition the District Court issued its mandate to the holders of the property to show cause why the seizure under the writ of replevin should not be vacated and the property returned and why they should not be enjoined from further interference with the property. Pending the hearing on the

show cause order they were restrained from such interference. After the hearing the District Court restrained the holders from disposing of the property and ordered them to deliver it to the trustee, who presumably was appointed after the petition was filed and before the decision of the court. The Circuit Court of Appeals certified the following questions to the Supreme Court for its instruction:

"'1. Whether the District Court sitting in bankruptcy had jurisdiction by summary proceedings to compel the return of the property seized:

"'2. Whether after adjudication in bankruptcy an action in a State court can be commenced and maintained against the bankrupt to recover property in the possession of and claimed by the bankrupt at the time of the adjudication.

"'3. Whether the property of a bankrupt upon his adjudication in bankruptcy is in custodia legis of the bankruptcy court and can be taken possession of under process of the State court.'

"In answer to the first question the Supreme Court said: 'Not going beyond what the decision of the case before us requires, we are of the opinion that the judge of the court of bankruptcy was authoried to compel persons who had forcibly and unlawfully seized and taken out of the judicial custody of that court property which had lawfully come into its possession as part of the bankrupt's property to restore that property to its custody, and therefore our answer to the first question would be, the District Court sitting in bankruptcy had jurisdiction by summary proceedings to compel the return of the property seized.'

"In reference to the point covered by the second question the Supreme Court said: 'So far as regards this point the decision of this court in Freeman vs. Howe, 24 Howard 450, more than covers the case. It was there adjudged that property taken and held by a marshal on a writ of attachment from a court of the United States directing him to attach the property of one person could not be taken from his possession on a writ of replevin from the State court in behalf of another person who claimed the attached property as his own.'

"'The second question certified relates to this point, although it is not so clearly expressed as it might be and omits to mention in whose possession the property was when the writ of

replevin was sued out. To that question as explained and restricted by the facts set forth in the statement which accompanies it, our answer is, after an adjudication in bankruptcy an action in replevin in a State court cannot be commenced and maintained against a bankrupt to recover property in possession of and claimed by the bankrupt at the time of that adjudication, and in the possession of a Referee in Bankruptcy at the time when the action of replevin is begun.'

"The court held that the answers to the first and second questions rendered any further answer to the third question unnecessary."

In re. Russell & Birkett, 101 Fed. 248, the court says: "The prohibition of Section 720 of the Revised Statutes against enjoining the proceedings of a State court does not apply when any law relating to bankruptcy authorizes an injunction, nor does it where the proceedings sought to be enjoined have been commenced after the jurisdiction of the Federal court has attached. Fish vs. Union Pacific R. R., 10 Blatchford 518; French vs. Hay, 22 Wallace 250; Dietsch vs. Huidekoper, 103 U. S. 494."

In the case of Clemenshaw vs. International Shirt and Collar Co., 165 F. 797, a bill was filed in the bankruptcy court to establish a lien against the property in the custody of that court. The judge in delivering the opinion said: "The title to the property sought to be charged with the lien of a mortgage is vested in a trustee, an officer of this court, and was at the time of the commencement of the action. This court has the charge and custody of the property, and common sense seems to indicate that if any court is to charge it with a lien or permit it to be charged with a lien this is the one. If the transaction in and by which the lien was cancelled is fraudulent and voidable, may not this court at the suit of a party in interest so say? By section 2 of the bankruptcy act, an act to establish a uniform system of bankruptcy throughout the United States, * * * the District Courts are made courts in bankruptcy and vested with such jurisdiction in law and in equity as will enable them to exercise original jurisdiction in bankruptcy proceedings and to cause the estates of bankrupts to be collected, reduced to money and distributed, and determine controversies in relation thereto. I am very sure that this

confers ample an plenary jurisdiction on this court to determine the question involved here.

"Whitney vs. Wenman, 198 U. S. 539, 49 L. Ed. 1157, ex parte, the City Bank of New Orleans in matter of William Christy, assignee, 3 Howard 292, 312-313, 11 L. Ed., 603. This is a plenary action in equity to determine whether or not plaintiff has a lien on the property and the extent of it. As stated, the property is now in the possession of this court and is to be reduced to money and distributed by it. In Whitney vs. Wenman, 198 U. S., at page 552, the court held: 'We think the result of these cases is in view of the broad powers conferred in Section 2 of the bankrupt act authorizing the bankruptcy court to cause the estate of the bankrupt to be collected, reduced to money and distributed and to determine controversies in relation thereto and bring in and substitute additional parties when necessary for the complete determination of the matter in controversy. That when the property has become subject to the jurisdiction of the bankruptcy court as that of the bankrupt whether held by him or for him, jurisdiction exists to determine controversies in relation to the disposition of the same and the extent and character of liens thereon or rights therein. This conclusion accords with a number of well considered cases in the Federal courts. In re. Whitener, 105 Fed. 180; in re. Antiago Screen Door Co., 123 Fed. 249; in re. Kellogg, 121 Fed. 333.'

"In the case of Murphy vs. John Hoffman Co., 211 U. S. 564-5, suit was brought by the appellee in the State court against the appellant, who was the trustee in bankruptcy in charge of the subject of litigation. The trustee applied to the bankrupt court, of which he was an officer, to stay the pending action against him in the State court. Justice Moody, delivering the opinion of the court, recites that portion of the facts of the case upon which the opinion is based as follows: 'On the 9th of October, 1903, the judge of the bankruptcy court, on the petition of the receiver, enjoined all further proceedings in the action of replevin until the further order of the court; enjoined the Sheriff from executing any requisition in replevin of the property in the possession of the receiver and enjoined the Sheriff and all other persons from interfering in any manner with the property then in the possession of the receiver. In delivering the opinion he proceeds as follows: 'Before going

further it is well to ascertain the principles of law which are applicable to the situation. The bankruptcy act of 1898, 30 Statute at Large, 544, Chapter 541, U. S. Comp. Stat., 1901, page 3418, as originally enacted did not confer jurisdiction on the district courts of the United States over suits brought by trustees in bankruptcy to assert title to property as assets of the bankrupt or to set aside transfers made by the bankrupt in fraud of the creditors or by way of preference, unless by consent of the defendant. Bardes vs. First National Bank, 178 U. S. 524, 44 L. Ed. 1175; Frank Vollkommer, 205 U. S. 521 51 L. Ed. 911. The act, however, preserves the jurisdiction otherwise existing by statute of the courts of the United States, though it is limited to courts where the bankrupt himself could have prosecuted the action. Bush vs. Elliott, 202 U. S. 477; 50 L. Ed. 1114.

"But where the property in dispute is in the actual possession of the court of bankruptcy there comes into play another principle not peculiar to courts of bankruptcy but applicable to all courts, Federal or State. Where a court of competent jurisdiction has taken property into its possession through its officers the property is thereby withdrawn from the jurisdiction of all other courts. The court having possession of the property has an ancillary jurisdiction to hear and determine all questions respecting the title, possession or control of the property. In the courts of the United States this ancillary jurisdiction may be exercised though it is not authoried by any statute. The jurisdiction in such cases arises out of the possession of the property and is exclusive of the jurisdiction of all other courts, although otherwise the controversy would be cognizable in them. Wabash R. Co. vs. Adelnert College, 208 U. S. 38 to 54; 52 L. Ed., 379, 386.

"Accordingly, where property was in the possession of the bankrupt at the time of the appointment of a receiver it was held that the bankruptcy court had jurisdiction to determine the title to it as against an adverse claimant, and that the receiver had no right to deliver it to him without the order of the court. Whitney vs. Wenman, 198 U. S. 539; 49 L. Ed. 1157, 25 Sup. Ct. Rep. 778. On the day the Bardes case was announced the same Justice delivered the opinion of the court in White vs. Schloerb, 178 U. S. 542, 41 L. Ed. 1183; 20 Sup. Ct. Rep. 1007, a case in which the facts were essentially those of

the case at bar. Certain persons, co-partners in trade, were adjudicated bankrupts and the case was sent to a referee in bankruptcy. They had a stock of goods in a store, the entrance to which was locked by the referee. Certain other persons claimed title to part of the stock of goods as obtained from them by fraudulent purchase which had been rescinded. After the adjudication these persons brought an action of replevin of the goods against the bankrupt in a State court, which was executed. It was held that replevin would not lie in the State court, and that the District Court had jurisdiction by summary proceedings to compel the return of the property seized. The court said: 'The goods were then in the lawful possession of and custody of the referee in bankruptcy, and of the bankruptcy court, whose representative and substitute he was. Being thus in the custody of a court of the United States, they could not be taken out of that custody upon any process from a State court.' The last two cases cited proceed upon and establish the principle that when the court of bankruptcy, through the act of its officers, such as referees, receivers or trustees, has taken possession of a res, as the property of a bankrupt, it has ancillary jurisdiction to hear and determine the adverse claims of strangers to it, and that its possession cannot be disturbed by the process of another court. And see Skilton vs. Codington, 185 N. Y. 80, 85, 86; 113 Am. St. Rep. 885; 77 N. E. 790, and Frank vs. Vollkommer, which, by implication, approve the same principle."

In Bray et al. vs. U. S. Fidelity and Guaranty Co. et al., 170 Fed., p. 697, Circuit Court of Appeals, Fourth Circuit, an attempt was made to establish a lien in the U. S. Circuit Court against property in the custody of a trustee in bankruptcy. The Judge, after a lengthy statement of the facts, in delivering the opinion of the court, says: "The facts of this case are given at length and in detail to the end that the entire controversy between the parties may be clearly presented and thus enable us to more readily determine such question of law as may be necessary to dispose of the appeal. * * * We think the only question to be decided in order to dispose of the case here is that of jurisdiction, and it is our opinion that the Circuit Court did not have jurisdiction to entertain complainant's bill.

"If otherwise, complainant had the right to assert a lien upon the property of the bankrupt Contract Company, such

right could not be availed of by a suit in the Circuit Court the object of which was to reach and determine priorities in the disposition of assets in the custody of the bankrupt court. Practically the effect of complainant's suit in the Circuit Court is to stay proceedings, in the matter of Evansville Contract Company, bankrupt, in the District Court, and to undertake to determine priorities or preferences in an estate in the custody and control of the latter court. This the Circuit Court is not empowered to do, for the jurisdiction of the District Court in bankruptcy in this respect is original and exclusive."

After qualifying as trustee LeBlanc took charge of the property of the bankrupts. He was a partner in the Beaumont Rice Mills, a firm composed of himself and all the appellants. Acting in collusion with them and with the bankrupts, he delivered the McCrimmin rice to his co-partners and thereby converted it to the use of his partnership. Charged by the creditors with its value in their exceptions to his report as trustee, he undertook with the assistance of the appellants to escape liability by showing it became their property by a contract claimed to have been made between Broussard, the largest contributor to the capital stock of the Beaumont Rice Mills, and the bankrupts. Failing in this, and being held responsible for the value of the rice which he had delivered voluntarily, he has paid the sum required of him by the court, and thereby settled his account and relieved himself from its judgment. Appellants say he has taken the fund for this purpose from his partnership. He has taken only the value of the property which he delivered to it in violation of his duty as trustee, and without an order of the court. The partnership has not suffered, because they have only returned the value of the property which they wrongfully accepted from their co-partnership in the first instance.

LeBlanc, according to the allegations of the answer and of the petition filed by appellants in the District Court of Jefferson County, has no authority over the funds of his partnership. He has only a 2-75ths interest in its capital stock. J. E. Broussard is the principal stockholder, and has absolute control over all the business and property of said partnership. Neither the answer filed in this cause nor the petition in the State court shows how it was possible for LeBlanc to obtain from his co-partnership funds with which to satisfy the decree of the United

States District Court by paying the sum of money named in it and neither shows how he did obtain it. He was powerless without the assistance of his bondsman, J. E. Broussard, the principal owner of the Beaumont Rice Mills, who is clothed, according to the allegations of the answer and petition in the State court, with absolute authority over all of its property. But Broussard as surety of LeBlanc was responsible for the debt named in the order of the court, and doubtless consented to the advancement to his co-partner. A frown from him would have protected the assets of his co-partnership as effectually as the injunction of the State court. He seems to have a distaste of the Federal tribunal, and desires the judgments and decrees of that court to be revised and corrected by a jury in the State court. When the property of Moore & Bridgeman passed into the possession of LeBlanc, trustee in bankruptcy, and when after its conversion by said trustee and his co-partnership its value was paid to the appellant as trustee it was in the custody of the bankrupt court and no other had jurisdiction over it. Reluctant as appellants may feel to coming into that jurisdiction, no other court had the right to hear and determine any question concerning the ownership of the fund in the registry of that court or in the possession of appellee, and the bankrupt court had the right to restrain appellants by injunction from undertaking to proceed in the State court to recover the funds in the possession of appellee.

It is respectfully submitted that the injunction was properly granted and made final, and that the judgment of the Circuit Court of Appeals in affirming said action ought here to be affirmed.

HORACE CHILTON,

U. F. SHORT,

Counsel for Appellee.

HEBERT *v.* CRAWFORD, TRUSTEE, AND LEBLANC.

APPEAL FROM THE CIRCUIT COURT OF APPEALS FOR THE FIFTH CIRCUIT.

No. 83. Submitted December 9, 1912.—Decided April 7, 1913.

Whatever may be the legal rights of one claiming legal or equitable title to an asset, the fact that the bankrupt and his trustee had physical possession thereof gives the bankruptcy court control of the *res* and authority to administer it.

A petition to determine title to property in the possession of the bankrupt and his trustee may, as in this case, operate as an attachment, and thus bring the property into the custody and under the exclusive jurisdiction of the bankruptcy court.

A finding in a summary proceeding that the trustee has received physical possession of the property involved is conclusive against him and is not subject to collateral attack by third persons. *Noble* v. *Union River Logging Company*, 147 U. S. 173.

While the state court has jurisdiction to determine as between partners whether one is entitled to use the assets of his partnership to satisfy an order made in a summary proceeding in the bankruptcy court, and also whether the receiver received the same, it may not determine title to property in the possession of the trustee or who is entitled to possession thereof.

THE facts, which involve the rights of the trustee in bankruptcy and others in a crop of rice grown by the bankrupt and the jurisdiction of the state and Federal courts of the controversies arising thereover, are stated in the opinion.

Mr. Frederick S. Tyler and *Mr. A. D. Lipscomb* for appellants.

Mr. Horace Chilton and *Mr. U. F. Short* for appellees.

MR. JUSTICE LAMAR delivered the opinion of the court.

This conflict of jurisdiction, between state court and Bankruptcy Court, with injunction and counter-injunction, grew out of a controversy as to who was in possession of a crop of rice, when Moore & Bridgeman, who had planted it, filed their petition on July 16, 1906, to be adjudged bankrupts. If the rice was then in their possession the Bankruptcy Court had jurisdiction to administer it as assets of the estate, and to determine all claims to the property. *Babbitt* v. *Dutcher*, 216 U. S. 102. *Bryan* v. *Bernheimer*, 181 U. S. 188. *Bardes* v. *Hawarden Bank*, 178 U. S. 524.

The firm of Beaumont Mills claimed, however, that, for value and in good faith, they had acquired the title and possession of the rice on June 15, 1906, thirty days before the petition in bankruptcy was filed; that they had

employed Moore & Bridgeman to harvest and deliver it, and that LeBlanc, who was soon thereafter elected trustee, used labor, teams and machinery of the bankrupts in harvesting and threshing the crop. The Beaumont Mills paid him, as trustee, for these services and for hauling and delivering the rice to them at their warehouse. This they claim did not affect the jurisdiction of the state court of any controversy as to the ownership and possession of the crop.

Creditors of the bankrupts, on the other hand, denied the title of the Beaumont Mills, insisting that the crop belonged to Moore & Bridgeman, and that the delivery by LeBlanc, trustee, was a conversion to his own use and that of the Beaumont Mills, of which firm he was a member. These creditors thereupon instituted summary proceedings in the Bankrupt Court to charge him with its value. On that hearing two members of the firm of Beaumont Mills were sworn and testified as witnesses in his behalf. The District Court found in favor of the creditors and on December 17, 1907, entered an order reciting that the rice was the property of Moore & Bridgeman; that it came into the possession of LeBlanc, as trustee; that he improperly delivered it to the Beaumont Mills and was chargeable with $11,651, its value. The court thereupon directed that he pay that sum into the Registry of the court within ten days. That judgment was affirmed (166 Fed. Rep. 689).

LeBlanc was without funds with which to comply with this order and claimed that, under the circumstances, he had the right to withdraw $11,651—the value of the rice—from the funds of the Beaumont Mills and deposit it in the Registry of the court. The other members of the firm resisted this claim and accordingly instituted proceedings against him in the state court to prevent his carrying his threat into execution. In March, 1909, a temporary injunction was issued restraining him from withdrawing

partnership assets for the purpose of paying the money into the Bankrupt Court.

The creditors of Moore & Bridgeman contended that they were not concerned with the suit between the partners or the source from which LeBlanc secured the money to pay the judgment rendered against him on December 17, 1907. They therefore pressed for a compliance with that order, and to avoid attachment for contempt, LeBlanc, in disobedience of the Injunction, drew $11,651 from the bank account of the Beaumont Mills, paid the firm's money to the clerk of the Bankrupt Court, who deposited it with the Gulf Bank and Crawford, elected to succeed LeBlanc as trustee of Moore & Bridgeman.

The Beaumont Mills, at once, filed a Supplemental Petition in the state court making the Bank and Crawford, Trustee, defendants, and praying judgment against both of them for the partnership money in their hands, and for other and further relief. Crawford, in turn, immediately brought this bill, in the Bankrupt Court, to enjoin the Beaumont Mills from prosecuting their suit against him in the state court. He insisted that the Bankrupt Court had jurisdiction of the *res* and was, alone, authorized to determine his right to retain the $11,651 paid over to him as Trustee. He contended also that the order of December 17, 1907, in the Summary Proceedings was not only conclusive that the Bankrupt Court had jurisdiction of the *res*, but he also insisted that as the Beaumont Mills had taken part in that litigation, they were bound by the finding that the crop belonged to Moore & Bridgeman. A decree was rendered in Crawford's favor by the District Court. It was affirmed by the court of Appeals and is brought here by the Beaumont Mills for review.

Crawford's contention must, in part, be sustained. For whatever may have been the legal or equitable rights of the Beaumont Mills under their contracts with Moore & Bridgeman, and under the Bill of Sale of June 15, 1906, it

still appears that, first, Moore & Bridgeman and, later, LeBlanc, as trustee, engaged in gathering, threshing, hauling and delivering the rice. This physical possession, under the decision in *Murphy* v. *Hofman Co.*, 211 U. S. 562, and cases cited, gave the Bankrupt Court control of the *res*, and authority to administer it along with all other property in their physical possession when their petition was filed. That petition operated as an attachment and brought the rice into the custody of the Bankrupt Court.

"Where property was in the possession of the bankrupt at the time of the appointment of a receiver . . . the bankruptcy court had jurisdiction to determine the title to it (569). . . . When the court of bankruptcy, through the act of its officers, such as referees, receivers or trustees, has taken possession of a *res* . . . it has ancillary jurisdiction to hear and determine the adverse claims of strangers to it, and its possession cannot be disturbed by the process of another court." *Murphy* v. *Hofman Company*, 211 U. S. 562, 569, 570, and authorities. Nor was this jurisdiction lessened because LeBlanc, trustee, after gathering the crop delivered the rice into the possession of Beaumont Mills at their warehouse. "The court had possession of the property and jurisdiction to hear and determine the interests of those claiming a lien therein or ownership thereof. . . . This jurisdiction can [not] be ousted by a surrender of the property by the receiver, without authority of the court." *Whitney* v. *Wenman*, 198 U. S. 539, 553.

Under these decisions the physical possession of the crop brought the property within the exclusive jurisdiction of the Bankrupt Court. The finding in the Summary Proceeding that LeBlanc had received possession, as trustee, was conclusive against him, and was not subject to collateral attack by third persons. *Noble* v. *Union River Company*, 147 U. S. 165, 173–4, and cases cited.

But that decision was not entered in a suit, in its nature plenary, to try title, and was not binding upon the Beaumont Mills, even though two members of the firm testified as witnesses. It was an order in bankruptcy finding that LeBlanc, having been in possession of the property as trustee, was accountable for its value. But it did not determine what was to be done with the rice, or who owned it, or whether the Beaumont Mills had a title thereto or a lien thereon. All these matters were left open for adjudication by the Bankrupt Court when plenary suits were filed by any person having a claim to the property. Or, since the rice had been withdrawn from the custody of that court, the trustee could institute therein a suit for the rice or its proceeds. He would hold the same when recovered for the benefit of whomsoever might be determined to be entitled thereto in whole or in part.

None of these issues could be settled by LeBlanc. The fact that he was trustee and at the same time a member of the firm of Beaumont Mills, did not give him the right to use partnership assets of any sort for the purpose of satisfying the judgment rendered against himself, and by a wrongful conversion of firm money rectify what had been held to be a wrongful conversion of the bankrupt's rice. There is no claim that the $11,651 had been earmarked or had been set apart as a specific fund to represent that property, or that what LeBlanc delivered to Crawford was the same money that had been received from the sale of the rice two years before. On the contrary, Crawford in his bill insists that the Beaumont Mills "still have the rice or its proceeds," and the answer of the Beaumont Mills avers that the money was checked out by LeBlanc from the firm's bank account and deposited with Crawford.

That being so, LeBlanc was not authorized to draw out this partnership money and hand the same over to Crawford, trustee, even though the latter may have had a

claim against that firm for an equal amount. When LeBlanc threatened to misapply their assets whether $11,651 in money or corn or anything else of equal value, the other partners were entitled to apply for equitable relief, and the state court had jurisdiction to restrain him from using money of the Beaumont Mills to satisfy his personal obligation. As an incident of that jurisdiction the state court could determine the liability of Crawford, trustee, who received such money of the firm with notice that it had been taken in violation of that injunction. *In re Kanter*, 121 Fed. Rep. 984. *In re Spitzer*, 130 Fed. Rep. 879. *In re Mertens*, 147 Fed. Rep. 182. Cf. Act of August 13, 1888 (25 Stat. 433, 436, c. 866). For his representative capacity did not exempt him from liability for wrongfully receiving or retaining these funds paid over in disobedience of an injunction,—since money thus tortiously paid and held did not thereby become a part of the *res* within the exclusive control of the Bankrupt Court.

The fact that the jurisdiction of the two courts is limited, as a result of the Bankrupt Act, makes it impossible for either, without the consent of both parties, to determine the whole controversy in one suit. The state court has the right to try the question as to whether Crawford and the bank received the money with notice that it was partnership assets, and if so, to enter judgment in favor of the Beaumont Mills. But it could not determine who was in possession of the rice on July 16, 1906, or who was entitled to the property or its proceeds. That matter had been drawn within the jurisdiction of the Bankrupt Court by the order of December 17, 1907, and that decision was not subject to review by the state court. The decree must, therefore, be reversed in so far as it enjoins the Beaumont Mills from suing Crawford, trustee, for partnership assets paid into his hands in violation of the state injunction;—but without prejudice to the right of Crawford, trustee, to proceed in the District Court of

the United States against the Beaumont Mills for the recovery of the rice, its proceeds, or its value, and without prejudice to the right of the Beaumont Mills, in such suit, to make any defense or to assert any claim, lien or title to the property by reason of contracts and transactions with Moore & Bridgeman, Moore or others before the petition in bankruptcy was filed.

The decree is reversed and remanded for further proceedings in conformity with this opinion.